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THE CONSTITUTION AS INSTRUMENT AND AS SYMBOL*

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On an early page of his celebrated *Constitutional Limitations*, Judge Cooley defines "constitution" in the following curt terms: "That body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised." Returning later to the subject, he quotes with approval a more elaborate conception, couched in these words: "What is a constitution, and what are its objects? It is easier to tell what it is not than what it is. *It is not the beginning of a community, nor the origin of private rights; it is not the fountain of law, nor the incipient state of government; it is not the cause, but consequence, of personal and political freedom; it grants no rights to the people,* but is the creature of their power, the instrument of their convenience. *Designed for their protection in the enjoyment of the rights and powers which they possessed before the constitution was made, it is* but the framework of the political government, and *necessarily based upon the preëxisting condition of laws, rights, habits, and modes of thought. There is nothing primitive in it, it is all derived from a known source. It presupposes an organized society, law, order, property, personal freedom,* a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachments of tyranny. *A written constitution is in every instance a limitation upon the powers of government in the hands of agents;* for there never was a written republican constitution which delegated to functionaries all the latent powers which lie dormant in every nation, and are boundless in extent, and incapable of definition."[1]

* A paper delivered at the Tercentenary Conference of Arts and Sciences at Harvard University, September, 1936.

[1] Cooley, *Constitutional Limitations* (2nd ed., 1871), pp. 2, 38. Italics are mine.

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The first of these definitions answers to what I mean in this paper by the term "constitutional instrument"; the second approximates, particularly in the passages which I have stressed, what I have in mind when I speak of "constitutional symbol."

To the modern mind, confident in the outlook afforded by science and its achievements, the word "instrument" connotes the future and things needing to be done in the future. It assumes that man is the master of his fate, able to impart a desired shape to things and events. And regarded from this point of view a constitution is *an instrument of popular power—sovereignty*, if you will—*for the achievement of progress.*

American constitutional symbolism looks, on the other hand, to the past and links hands with conceptions which long antedate the rise of science and its belief in a predictable, manageable causation. Its consecration of an *already established order of things* harks back to primitive man's terror of a chaotic universe, and his struggle toward security and significance behind a slowly erected barrier of custom, magic, fetish, tabu. While, therefore, the constitutional instrument exists to energize and canalize *public power*, it is the function of the constitutional symbol to protect and tranquilize *private interest or advantage as against public power*, which is envisaged as inherently suspect, however necessary it may be. What has been the relation of these two conceptions in the case of the Constitution of the United States? To answer this question is the main purpose of this paper.

The aspect of the Constitution of the United States as an instrument of popular government for the achievement of the great ends of government is stamped on its opening words: "We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America."

The aspect of the Constitution as symbol and bulwark of a previously achieved order of human rights appears most evidently in the ninth article of the Bill of Rights: "The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people." The same idea was expressed by Webster in the following words: "Written constitutions sanctify and confirm great principles, but the latter are prior in

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existence to the former." Or as Governor Landon put the same idea recently: "The Constitution was not framed to give us anything, but to protect inherent rights already possessed."[2]

That the attitude of the members of the Federal Convention toward their task was predominantly instrumentalist and practical is clear at a glance. They had not gone to Philadelphia merely to ratify the past, Governor Landon to the contrary notwithstanding, but with *reform* in mind, and specifically the creation of *a strong, effective national government.* Theirs, it must be remembered, was one of the great creative periods in the history of political institutions, and they were thoroughly imbued with the faith of their epoch in the ability of the human reason, working in the light of experience, to divert the unreflective course of events into beneficial channels; and in no respect did they deem man more evidently the master of his destiny than in that of statecraft. Furthermore, most of these men had been reared in the Mercantilist tradition, and accordingly regarded governmental intervention in the field of economic activity as one of the chief reasons for the existence of government; while the importance to government in turn of engaging the self-interest of groups and individuals by its active policies was a thing constantly present to their minds. The atmosphere of the Convention was, in fact, almost scandalously secular. Despite the social preëminence of the cloth in 1787, not a clergyman was listed among its fifty-five members; and when Franklin suggested that one be recruited to open the meetings with prayer, the proposal was shelved by his obviously embarrassed associates with almost comical celerity. Nor did the Constitution as it came from their hands contain a bill of rights.

And naturally the party which brought the Constitution into existence continued to regard their work pragmatically while they elaborated a working government under it. "You have made a good Constitution," a friend remarked to Gouverneur Morris shortly following the Convention. "That," Morris replied, "depends on how it is construed"; and in his characterization of the Constitution as "an experiment," Hamilton voiced the same pragmatic point of view. The new Ship of State was quickly crowded with all the canvas of powers "implied," "resultant," "inherent," that its slender, vibrant phrasing would carry; and it is a significant fact that the constitutional validity of not a single item

[2] Speech at Topeka, Kansas, Jan. 29, 1936.

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of the Hamiltonian program was challenged judicially, even in principle, until a generation later.

The Constitutional Instrument was the work of a limited class, comprising those whose "interests and outlook," as Woodrow Wilson put it, "transcended state lines." The Constitutional Symbol, on the other hand, *being a symbol*, was the work of the many, a creation of the *mass mind*. Indeed, prevision of the symbolic rôle of the Constitution is older than the Constitution itself. In the same number of *Common Sense* in which he urged independence, in February, 1776, Thomas Paine also urged "a Continental Conference." He said: "The conferring members being met, let their business be to frame a Continental Charter or Charter of the United Colonies (answering to what is called the Magna Charta of England), fixing the number and manner of choosing members of Congress and members of Assembly . . . and drawing the line of business and jurisdiction between them (always remembering that our strength is continental, not provincial) securing freedom and property to all men . . . with such other matters as it is necessary for a charter to contain. But where, say some, is the King of America? That we may not appear to be defective even in earthly honors, let a day be solemnly set apart for proclaiming the charter; let it be brought forth placed on the divine law, the word of God; let a crown be placed thereon, by which the world may know that so far we approve monarchy that in America the law is King."[3]

That so able a propagandist as Paine proved himself to be should have sensed the popular need for a symbol, as well as the fact, of authority is perhaps not to be wondered at. At any rate, the Constitution had not long been in operation before his prediction was fulfilled most amazingly. The outbreak of the wars of the French Revolution, by enlarging British and Continental demand for American products, brought a hazardous prosperity which minds unaccustomed to looking so far afield for causes attributed to the Constitution. Speaking on the floor of the Congress in 1794, Richard Bland Lee declared: "I will only mention the stimulus which agriculture has received. In travelling through various parts of the United States, I find fields a few years ago waste and uncultivated filled with inhabitants and covered with harvests, new habitations reared, contentment in every face,

[3] Paine, *Political Writings* (1837), I, pp. 45–46.

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plenty on every board; confidence is restored and every man is safe under his own vine and fig tree, and there is none to make him afraid. To produce this effect was the intent of the Constitution, and it has succeeded."[4]

To be sure, there were skeptics. "It has been usual with declamatory gentlemen," complained sour old Maclay, "in their praises of the present government, to paint the state of the country under the old Congress as if neither wood grew nor water ran in America before the happy adoption of the Constitution."

Such disparagement, discreetly confided to the pages of a private journal, did not stem the course of opinion. Hardly has Holy Writ itself been more eulogized than the Constitutional Symbol presently came to be. "In the Constitution of the United States," wrote Justice William Johnson in 1823,"—the most wonderful instrument ever drawn by the hand of man—there is a comprehension and precision that is unparalleled; and I can truly say that after spending my life in studying it, I still daily find in it some new excellence."[5] And inevitably the virtues of the Framers were imputed to their handiwork, as were its virtues to them. Jefferson, ordinarily no reverent spirit, at first described the Convention as an assemblage of "demi-gods," though he later reconsidered this appraisal. On the other hand, while Hamilton's cold evaluation of the Constitution as "an experiment" was repeated by Washington in his Farewell Address eight years later, Jackson in his Farewell Address in 1837 demurred to this description as no longer suitable. Even in the midst of civil war, when the "experiment" seemed to have failed, it was apostrophized as embodying much more than "calm wisdom and lofty patriotism," as "providential," "God's saving gift," "His creative fiat over a weltering chaos: 'Let a nation be born in a day.'"[6]

But when one says that the Constitution had become "a symbol," one has not advanced very far, for the question remains, *symbol of what?* Initially the symbol was, it would seem, hardly more than decorative—the tribute which the American people rendered their own political sagacity for ordaining such a marvel-

[4] For this and the quotation in the next paragraph, see Frank I. Schechter, "The Early History of the Tradition of the Constitution," in this REVIEW, Vol. 9. pp. 707, 720 (Nov., 1915).

[5] Elkinson v. Delieseline, 8 *Fed. Cas.* 593.

[6] Quoted by Fletcher M. Green in *Pubs. of Emory Univ.*, Vol. 22, No. 5, p. 7 (May, 1936).

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ous constitution. Yet this symbol of high political achievement became in time a symbol of distrust of the political process—a symbol of democracy's fear of democracy. How explain this seeming paradox, and what have been the results?

It is no contradiction of what has been said in preceding paragraphs to point out that the *original* attitude of the American masses toward the document which came from the Philadelphia Convention was very far from being one of worship. The said masses were small farmers with slight social experience and vast social suspicions, and the latter had been given by the agitation leading to the Revolution a decided anti-government—and especially an *anti-central-government*—set. Nor, in fact, was the Constitution which its former opponents presently vied with its former champions in praising altogether the same Constitution as the one over whose merits they had originally divided. Not only had it now a bill of rights, but what was vastly more important, the authors of the Virginia and Kentucky Resolutions, squaring the logical circle, had succeeded in affixing to it, for those who chose to welcome the improvement, a gloss of the extremest states-rightism. It is true, of course, that Marshall was still to propound from the bench for more than a third of a century the original conception of the Constitution as the ever-adaptable instrument of national needs; yet only, as it were, academically, and in behalf of statutes for which the Congresses of the period were enacting few counterparts. The national sovereignty had become in truth, long before the end of Marshall's chief-justiceship, a sovereignty *in vacuo*, in no small measure.

But certain environmental factors have been, perhaps, even more potent than intellectual currents in finally affixing to the Constitutional Symbol its distinctively negative quality. The presence to the eastward of the Atlantic Ocean, with its fair assurance against hostile invasion, discredited from the outset any plea in favor of strong government in the name of defense. The presence to the westward of endless stretches of cheap lands opened to even the humblest members of society an opportunity for self-assertion on a scale never before approached in the history of mankind. Lastly, the presence throughout this richest of continents of vast mineral and other natural resources which public policy, or rather the lack of it, threw open to private preëmption with little restriction vested the acquisition of wealth with a moral and legal sanc-

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tion of its own. People were content with the answer that the country was being developed.

It is a commonplace that Constitutionalism has worked in this country to impress upon the discussion of public measures a legalistic—not to say theological—mold. By a terminology which treats *doctrines* as *facts*, the actualities which should control statesmanship have been too often kept at arm's length; while for the question of the beneficial *use* of the powers of government has been substituted the question of their *existence*. The tendency in question manifested itself at an early date. Said W. H. Crawford in a speech in the Senate in February, 1811: "Upon the most thorough examination, I am induced to believe that many of the various constructions given to the Constitution are the result of the belief that it is absolutely perfect. It has become so extremely fashionable to eulogize the Constitution, whether the object of the eulogy is the extension or contraction of the powers of the government, that whenever its eulogium is pronounced, I feel an involuntary apprehension of mischief."[7]

Crawford's words carry the significant suggestion that there were those who looked upon the constitutionality of a measure as a positive quality, a reason by itself for the measure's enactment. Such an attitude is, in truth, a normal phase of the psychology of Constitutionalism. What better reason can there be for doing a thing than the right to do it when that was challenged in the first instance? Speaking generally, nevertheless, constitutional debate proceeds characteristically from the point of view of *negation* and treats the Constitutional Symbol as a source of *tabu;* and the "great constitutional lawyer" is one who knows how to make two constitutional restrictions grow where one grew before. Indeed, it is astonishing the extent to which the taint of constitutional obliquity has always dogged the footsteps of the American people and their representatives. The Constitution itself was unconstitutional by an argument to which Madison felt it necessary to reply in *The Federalist*. Most of Hamilton's legislative program was unconstitutional in the opinion of half of Washington's cabinet. The Louisiana Purchase was unconstitutional in the opinion of the

[7] Benton, *Abridgment*, etc., IV, 266. See also his further statement (*ibid.*, 308): "The gentlemen . . . still view it [the Constitution] as a model of perfection. They are certainly at liberty still to entertain that opinion. Every man has a right to erect his idol in this land of liberty, and to fall down and worship it according to the dictates of his conscience."

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President who accomplished it. The most important measure by which the slavery question was kept in abeyance for years was unconstitutional in the opinion of large numbers of people, and finally in the opinion of the Supreme Court. The Civil War was brought to a successful issue by resorting to measures which two out of three Americans alive at that time would have voted to be unconstitutional; and according to the Democratic *Almanac* of 1866, the Thirteenth Amendment was unconstitutional. And the enumeration might easily be prolonged to include almost every measure of scope and of somewhat novel character that the Congress of the United States has enacted within the last half-century.

Despite all which, it may be remarked of constitutional negativism, as Lord Acton remarked of liberty, that it must have remained impermanent and inefficient had it not found embodiment in an implementing institution. I refer, of course, to judicial review, and especially to the power of the Court to disallow acts of Congress on the ground of their being in conflict with the Constitution. Recently there has been a renewal of the old debate as to the intentions of the Framers in this respect. Neither party, perhaps, has quite all the truth on its side. That the Framers anticipated some sort of judicial review of acts of Congress there can be little question. But it is equally without question that ideas generally current in 1787 were far from presaging the present vast rôle of the Court.

Thus, as we saw earlier, constitutional negativism exalts the Bill of Rights as the bulwark of achieved liberties. In the Virginia convention, on the other hand, which ratified the Constitution, Marshall declared of bills of rights that they were "merely recommendatory. Were it otherwise," he continued, ". . . many laws which are found convenient would be unconstitutional." The principle of the separation of powers, too, was originally thought to be "directory only," and hence as not affording a judicially applicable restriction upon legislative power. Again, the Constitution is today assumed to comprise *a closed, a completed system.* Indeed, this assumption is asserted by Cooley to be the underlying basis of judicial review. Yet in the debate on the location of the removal power in the first Congress to assemble under the Constitution the most strongly held theory was that the Constitution did not declare itself on the point, as obviously it does not, and that accordingly Congress was confronted with a *casus omissus*

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which under the necessary and proper clause it was entitled to supply. And no less paradoxical by modern standards is Chief Justice Marshall's suggestion early in 1805, while the Chase impeachment was pending, that the power of impeachment ought to be surrendered by Congress in return for power to reverse such "opinions" of the Court as Congress found objectionable. In a recent discussion of this episode in the Senate, it was confidently asserted that what Marshall had in mind was an amendment to the Constitution.[8] But quite clearly this was not the case. The situation was an urgent one; Marshall was trembling not only for the safety of the Court but for the safety of his own position. What he evidently had in mind was an *ad hoc* understanding between the two branches, one that would ripen in time into a fixed custom of the Constitution.

The opinion of our Senatorial wise men confirms Professor Maitland's statement as to the tendency of the law (i.e., of the lawyers) to "antedate the emergence of modern ideas," and it may be added that they sometimes antedate other things too. How account otherwise for that door-panel of the new Supreme Court Building which pictures—or at least was originally thought to do so—Chief Justice Marshall as handing to Justice Story the former's opinion in Marbury v. Madison, although this opinion was rendered some nine years prior to Story's appointment to the Bench;[9] or for the occasionally encountered motif in court-room murals of the *signing* of Magna Carta by King John, although John probably could not write, and at any rate the great seal, affixed by the Chancellor, was thought to serve such occasions very adequately. Nor is this to mention Senator Borah's speech last February 22, in which Washington is represented as delivering the Farewell Address in the new capital named for him some four years before said capital was open for business!

Judicial review of national legislation first disclosed its potentialities seventy years after the framing of the Constitution, in the Dred Scott Case, where it is placed squarely on a symbolic basis. The Constitution, Chief Justice Taney there declares, speaks always "not only with the same words, but with the same intent" as when it came from the Framers. Thus is the miracle which is

[8] *Cong. Record*, June 18, 1936, p. 10013.

[9] See Mr. Benjamin Ginsburg's communication to the *Washington Evening Star*, Sept 15, 1936; also the *New York Times* of July 5, 1936.

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the Constitution of 1787 to be maintained and preserved by the mystery which is judicial power—its clairvoyance into the intentions of men long dead as to things which did not exist when they lived!

And by the same token, if judicial review has conserved the Constitutional Symbol, the Constitutional Symbol has conserved judicial review, by screening its operations behind the impersonal mask of the unbiased past. Even today, the notion of the judicial mouthpiece of a self-interpreting, self-enforcing law has its adherents. Listen, for instance, to this defense by a correspondent of the *New York Times* of the decision in the Rice Millers' Case, which awarded some 200 millions of dollars to people most of whom were probably not entitled to it: "For so long as the Constitution of the United States endures in its present form, it must operate with the infallibility of the laws of nature. Sound and fecund growths will be fortified by its influences. Its impact will always strip the fruit from any governmental tree which is too defective to maintain its own integrity. The office of the Supreme Court is simply to elucidate the process."[10]

Coming now to the heart of the problem here under discussion, I propose to point out briefly certain restrictions upon the national legislative power which the Court has from time to time ratified in favor, primarily, of certain minority interests, on the theory that such interests comprised an essential part of a prior order of things which it was a fundamental—*the* fundamental—purpose of the Constitution to put beyond the reach of popular majorities. Viewed from this angle, the Constitutional Symbol is seen to part company with the Constitutional Instrument very radically. *The symbol of the many becomes the instrument of the few, and all the better instrument for being such symbol.*

The two minority interests which have left the deepest imprint on our constitutional law, so far as national power is concerned, are slavery and that fairly coherent group of interests which are commonly lumped together as "Big Business." Slavery was awakened to its situation by the Tariff of 1828. But as no appeal could be taken to the Court with any hope of success so long as Marshall dominated it, Calhoun, reversing his constitutional creed almost overnight, fashioned a fantastic substitute from the Virginia and Kentucky Resolutions of thirty years previous; and by the aid of

[10] *New York Times*, May 5, 1936.

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Nullification the South was presently able to force a compromise with the adherents of the American System.

Twenty years later the question of slavery in the territories was to the fore, and meantime the menacing possibility had presented itself that the rising forces of Anti-Slavery in Congress would attempt to put a stop to the interstate slave trade. Whether by dint of foresighted management or by accident, the slave-holding states had now a majority on the Court, and the drive which culminated nine years later in the Dred Scott decision, to get a judicial determination of the territorial question was launched. But what line ought the Court to take in handling questions of national power affecting slavery? Should it treat slavery as constituting a special case, a sort of enclave, withdrawn by the intention of the Framers from the constitutional powers of the national government; or should it construe these powers in such a way as to render them harmless for slavery considered simply as any proprietarian interest? In his opinion in the Passenger Cases, Justice Wayne of Georgia, the strongest nationalist on the Taney Bench, suggested the former expedient, but without success. The consequence is that the two doctrines which have proved most restrictive of the powers of Congress in recent years are directly traceable to the Taney Court. The first of these is the doctrine that the Tenth Amendment segregates to the states certain "subjects," "fields," or "interests," and hence forbids Congress to exercise any of its powers, but especially its interstate commerce and taxing powers, with the effect or intention of governing such "subjects," "fields," or "interests." The second is that the due process clause of the Fifth Amendment authorizes the Court to invalidate any act of Congress which it finds to impair property rights "unreasonably." Furthermore, from the defenders of the Dred Scott decision came the doctrine of the "finality" of the Court's interpretations of the Constitution—a doctrine which Lincoln assailed in his first inaugural as transferring to the Court the people's right of self-government.

And it is on these bases, shaky as they are in both logic and history, that the Court has chosen to rest the most outstanding of its recent decisions. There is no need to review these holdings in any detail in order to show their bearing on our subject. The climax is reached when they are considered for their impairment of the Constitutional Instrument, in the A.A.A. Case, which,

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when evaluated in the light of Justice Roberts's opinion, appears to assert that Congress may not legitimately employ its granted powers in order to further on a *national* scale any end which the states may legitimately attempt on a *local* scale. Others of these decisions have suddenly thrust into prominence as a restrictive principle the heretofore innocuous and unused doctrine that a legislature may not delegate its power, but without giving that doctrine coherent or understandable form. Still another decision rejects the principle of emergency power on the basis of the equivocal or erroneous assertion that the powers of the national government have proved" adequate" "both in war and peace." Still another implies a theory of judicial autonomy in relation to legislative power which represents a *vast* departure from the views of the Framers. Lastly, the American Liberty League, whose mission it is to spread the gospel of the Constitution as symbol of the "American Way," informs us that the Constitution may be amended "in harmony with its fundamental principles"—that is, may *not* be amended in disharmony therewith. Perhaps it is to be regretted that the judicial history of the Prohibition Amendment contains small assurance of this doctrine ever receiving that acceptance which would round off most conclusively and artistically the triumph of the Constitutional Symbol over the Constitutional Instrument.[11]

Considered, in short, from the point of view of the national legislative power, especially in the important fields of taxation and interstate commerce regulation, the Constitution has passed through the following phases: from (1) an instrument of national government, a source of national power, to (2) an object of popular worship, finally valued chiefly for the obstacles it interposed to the national power, to (3) a protection of certain minority interests seeking escape from national power; or, in other words, from constitutional instrument to constitutional fetish, to constitutional tabu, to constitutional instrument again, albeit the *negative* instrument of certain special interests, not the *positive* instrument of a government of the people.[12]

[11] It is doubtless with the Liberty League in mind that Professor Radin wrote recently: "The search for a new capitalist religion in the United States is rapidly taking the form of consecrating patriotic symbols and multiplying rituals which will inevitably be associated with the existing type of economic organization." *New York Univ. Law Quar. Rev.*, Vol. 13, p. 505.

[12] In support of the immediately preceding paragraphs, see generally my *Com-*

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And with what final result for national legislative power? The question is answered admirably by Mr. Irving Brant in his recent *Storm over the Constitution:* "During this later period the United States shifted from a Constitution of *implied powers* under the express powers [of Congress] to a Constitution of *implied limitations* on the express powers. It was virtually the same thing as writing a new, and infinitely narrower, Constitution"[13]—that is, the same thing as permitting the Court to do this.

It would be easy to ascribe this conversion, partial but immensely important, of the Constitutional Instrument of the many into the Constitutional Instrument of the few to a conspiracy of the latter; or, to use Sir Thomas More's words, to a "conspiracy of rich men, procuring their own commodities under the title of commonwealth." And the truth of the matter is that the effluvia of conspiracy are never altogether absent when authority joins itself to a mystery, such as the Constitution of the United States has to many intents and purposes become today. On the other hand, the propensity of the professional exalter of the Constitutional Symbol for modern propaganda technique hardly fits the charge, inasmuch as propaganda—or so we are assured—rarely builds *de novo*, but works upon *existing* beliefs. We may therefore concede that the propagandist against the expansion of national power *thinks* that there is that in the popular mind to which he can appeal successfully; and he may be right. For, as a colleague suggests, we are today in the presence of the reverse of the situation which elicited from Mr. Dooley his famous remark anent the Supreme Court's following the "election returns." The question at present is, Will the election returns follow the Supreme Court?

Certain of the characteristics of popular thinking which go to explain the rise of constitutional negativism, and thereby the implementation of certain minority interests by the Constitution, were adverted to early in this paper. One, however, I have reserved for more special mention in these closing paragraphs; and it is the fundamental premise of economic individualism. I mean the assumption that economic power is *natural* and political power *artificial*, from which the conclusion is drawn that "*arbitrary*" power is characteristically *governmental* power. The latter idea

merce Power versus States' Rights, published by the Princeton University Press on August 4 last.

[13] Brant, *Storm over the Constitution*, p. 129.

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clearly underlies the more significant of the Court's recent decisions. Thus, in the A.A.A. Case the Court held that in requiring agriculturists to sign contracts as a condition of receiving certain payments from the Treasury, the government "coerced" the agriculturists, who "involuntarily" accepted its terms. Yet had Mr. Henry Ford stood in the place of the government in such a transaction, who would ever have thought of using such language about it? Moreover, there are still cases in good standing which hold that a laborer is not coerced when confronted by his employer with the alternative of giving up his job or quitting his union, although it *is* coercion for government to forbid the employers to do this! Likewise, in the Alton Case the Court holds that for Congress to require a carrier to pension a superannuated employee is to deprive the carrier of liberty and property without due process of law, the "liberty" in question being the carrier's right to dismiss a superannuated employee without pensioning him.

The unreality of such thinking is hardly travestied in the following passage from Professor Arnold's witty little volume, *The Symbols of Government:* "If the American people were actually free from countless petty restrictions, it is not likely that they would build a mansion in the judicial heavens dedicated to the principle, before which we make such curious sacrifices, that there should be no such restrictions. If we were not so constantly subject to arbitrary and uncontrolled power over our very means of existence, we would not require the dramatization of the abstract ideal that no such power could exist in America, provided that the case could be properly presented to the Supreme Court of the United States. The only absolute essential of a heaven is that it be different from the everyday world."[14]

The American people are today moving rapidly toward a constitutional crisis of unpredictable gravity, a crisis due chiefly to the Court's endeavor to put "Big Business" and its methods—the "American Way"—out of reach of effective government. Thanks to the Court's excessive preoccupation with this problem, the question has even been raised whether the entire system of constitutional limitations, judicially implemented, is not incompatible with popular government. Personally, I am not convinced that this is so; but I do think that if the dilemma suggested is to be avoided, short of formal constitutional change, the Court will have to en-

[14] Arnold, *Symbols of Government*, p. 224.

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large some of its conceptions, and especially will it have to enlarge its conception of public power *to include economic power*. For when this is done certain other important truths will also emerge. It will be seen that most people have to take orders from some source or other, and that therefore the problem of human liberty is not to be completely solved by the purely negative device of setting acts of Congress aside as contrary to the Constitution. Also recognition will dawn that there is no reason underlying the nature of things why acts or procedures which are regarded as unjust when they are resorted to by government are necessarily more defensible when resorted to by business management. Lastly, it will appear that unless we are to resign ourselves to economic autocracy, governmental power must be as little embarrassed by boundary lines as is economic power.

All this, however, I am conscious, is somewhat negative; and I would conclude on an affirmative note. I find it to hand in a passage from Señor Ortega's *Revolt of the Masses:* "The State is always, whatever be its form—primitive, ancient, medieval, modern—an invitation issued by one group of men to other human groups to carry out some enterprise in common. That enterprise, be its intermediate processes what they may, consists in the long run in the organization of a certain type of common life. State and plan of existence, programme of human activity or conduct, these are inseparable terms." And he elsewhere adds: "When there is a stoppage of that impulse towards something further on, the State automatically succumbs . . . breaks up, is dispersed."[15]

Revision of the Constitutional Symbol there must be, I submit, to bring it into conformity with the Constitutional Instrument, regarded as the instrument of a people's government and of a unified nation which has not yet lost faith in its political destiny.

[15] Ortega y Gasset, *Revolt of the Masses*, pp. 176, 183.

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Second Session of the Seventy-fourth Congress, January 3, 1936, to June 20, 1936.[1] The high command of the present Administration stipulated that all controversial reform legislation on the President's "must" list should be enacted during the first session of the Seventy-fourth Congress, leaving for its second meeting only the inevitable appropriation bills and whatever measures the exigencies of politics and government might make necessary. In accordance with this strategy, the President compelled Congress to remain in Washington until late August, 1935. When the legislators reassembled last January, there was common agreement that the second session would be brief, the "bonus" paid to the ex-service men, routine administrative bills enacted, and that the members would then dash off to the quadrennial political war. After a White House conference, the House majority leader, Mr. Bankhead, announced that "the President wants as short a session as possible consistent with the public interest and any eventualities that may arise, caused by possible decisions of the Supreme Court affecting New Deal legislation."[2] Within a week the high court had invalidated the New Deal farm program and set in motion forces which could be depended upon to prolong and make turbulent the Congressional session. Throughout its duration, debate raged over implications of the separation of powers doctrine. Prominent Democrats asserted that the courts had exceeded their authority in nullifying certain acts passed by the representatives of the people. The Republican orators, on the other hand, generally welcomed the judicial check on the legislative branch but bewailed the "supine surrender of Congressional prerogatives to Executive dictation." The inexorable rules of politics in an election year preordained that political considerations be given prominence in every legislative deliberation. Thus, directed by the President, pushed by organized minorities, challenged by the Supreme Court, tormented by fear of electoral repulse, our legislators stumbled unhappily through a hectic session.

Organization. When Congress convened in January, 1936, the Senate was composed of 69 Democrats, 23 Republicans, one Progressive, and one member of the Farmer-Labor party. The vacancies resulting from the death of Senators Schall of Minnesota and Long of Louisiana were soon filled by Elmer Benson, a Farmer-Laborite, and Mrs. Rose Long, a Democrat. During the session, death removed the two veteran senators from Florida, Park Trammell and Duncan U. Fletcher, the first of whom was replaced shortly by Scott Loftin.[3] David I. Walsh of Massachusetts suc-

[1] For notes by E. P. Herring on the first session of the same Congress, see this REVIEW, Vol. 29, pp. 985–1005 (Dec., 1935).

[2] *New York Times*, January 1, 1936, p. 2.

[3] Shortly after Congress adjourned, Senator Louis Murphy of Iowa was killed

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ceeded Mr. Trammell as chairman of the Naval Affairs Committee, relinquishing the headship of the Committee on Education and Labor to Hugo Black of Alabama. The death of Senator Fletcher finally entitled Senator Glass to his long cherished chairmanship of the Committee on Banking and Currency, but it is rumored that Administration pressure has been exerted upon him to retain his present position as head of the Appropriations Committee. Should Mr. Glass not be persuaded to remain as Senate guardian of expenditures, that function would normally be assumed by Kenneth McKellar of Tennessee.

As a result of four deaths, Republican membership in the House declined during the session to an even hundred, a record recent low party figure until the 1936 election. Three deaths and one resignation[4] on the Democratic side of the aisle reduced the vote of the majority party to 314, still more than enough to suspend the rules by a partisan vote. The sudden death of Speaker Joseph W. Byrns on June 4 caused the collapse of plans to drive Congress to an adjournment prior to the Republican convention. After the delay necessitated by the Cleveland meeting, a turbulent week was spent in the customary frantic scramble to clear the calendars before final adjournment. Since in both 1932 and 1936 the Democrats used the facilities of Congress for vigorous attacks on the opposition platform, thus delaying legislation and embarrassing the Republicans, who had little opportunity to retaliate, additional reason is furnished for holding the national conventions later in the summer.

No other Speaker has died while Congress was in session. Although many preferred to elect a Speaker *pro tempore* for the remainder of the session, it was discovered that the House rules required an immediate selection of a new Speaker, and Democratic leaders convened privately to develop a procedure. It was decided that the clerk should call the House to order, inform the members of the parliamentary situation, and preside over an election. Accordingly, the vacancy was filled within eleven hours of its creation by the promotion of the majority leader, William B. Bankhead of Alabama. As the minority departed from custom by abstaining from nominating its leader as a candidate, the choice was unanimous. The Democrats failed to select a new floor leader, leaving that problem in factional and sectional politics to their caucus in the Seventy-fifth Congress.

In an effort to get more efficient House leadership, the Democrats picked as Speaker a member who entered in 1917. Twelve fellow-partisans had served longer; seven others ranked equally in the scale of seniority. The election of Mr. Bankhead shows a reversion to an earlier custom of

in an automobile accident. In slightly over a year, Senators Cutting, Long, Schall, and Murphy suffered violent deaths.

[4] Mell G. Underwood of Ohio resigned to accept appointment as a United States district judge.

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electing Speakers on a basis of popularity and merit rather than political longevity. When Mr. Garner and Mr. Rainey were selected, only ailing Mr. E. W. Pou had seen greater service. When Mr. Byrns was chosen to head the House, Adolph Sabath alone had a superior seniority claim. Only the aging ex-speaker, Joe Cannon, had served longer than Mr. Frederick H. Gillett when he became Speaker in 1919. Champ Clark and Nicholas Longworth each had five party seniors when they were put in command of the House of Representatives. This practice of selecting only veteran leaders may help account for the brief tenure of recent Speakers. Four Democrats have been elected during the last six years; their four predecessors served a total of twenty-eight years.

Procedure. During 1936 there were three entries on the Calendar of Motions to Discharge Committees. A motion to discharge the Ways and Means Committee from consideration of H. R. 1, the Patman currency expansion bill for immediate payment of ex-soldiers, had been filed in the closing days of the first session, but could not be called up until January 13, 1936. Prior to this date, the committee reported, and the House adopted, a compromise measure. On January 13, Mr. Patman, failing to get unanimous consent, successfully moved that consideration of his bill be postponed two weeks. This maneuver kept the inflationary measure available as a bludgeon to insure the final passage of the compromise measure. It was not needed as a weapon, however, because there was no serious attempt, not even from the President, to thwart the will of Congress that the "bonus" question be settled promptly.

The next discharge motion brought before the House another inflationary measure, this time the Frazier-Lemke farm mortgage bill vigorously supported by the Rev. Charles E. Coughlin, Detroit radio priest. After an imprisonment of nearly a year in the Rules Committee, the bill became the subject of the most furious debate of the session. The final vote revealed that about 75 members who were opposed to the measure had signed the petition and had voted to discharge the committee, using this method of obtaining a definitive settlement of the issue. Defeat of the proposal ultimately resulted in the candidacy of Representative Lemke for President.

The third attempted use of the discharge rule was to liberate the anti-lynching bill from the Judiciary Committee, where it had been reposing for nearly a year and a half. The requisite signatures were obtained on June 15, when it was obvious that Congress would adjourn before a vote could be had on the motion to discharge. Thus it would appear that the chief value of the rule during the session was to force a record vote on the farm mortgage bill. This tested the courage and forced the hand of many members who disliked the proposal but feared electoral reprisals for an adverse vote from the cohorts of Father Coughlin.

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Debate. To study the debates in the House of Representatives is disheartening. While many able speeches are made, particularly by the chairmen and ranking minority members of committees in charge of bills, the general level of oratory is low. Confusion prevails thoughout the lower legislative chamber. There is a plethora of objections to unanimous consent requests, points of order, and requests to extend or revise remarks.[5] Roll-calls to establish a quorum or test the sentiment of the House are numerous and time-consuming. Individuals such as Tom Blanton and Marion Zioncheck, each with a persecution complex, obtrude their personal problems into the deliberative assembly, and engage in heated colloquys over irrelevant questions despite admonitions from the chair and stentorian cries of "regular order." Fortunately, the abovementioned gentlemen will not return to the Seventy-fifth Congress; the process of elimination, however, could be pursued further with profit.

In order that the will of the electorate be transmuted into law by such a large assemblage, a high degree of organization is imperative. Minorities must be choked by gag rules lest their obstructionist tactics defeat majority rule. To circumvent the restrictions of these rules, resort is regularly had to spurious amendments "to strike out the last word," thus enabling members to speak for five minutes ostensibly for or against the *pro forma* proposal. In the most recent session of Congress, there were no innovations in House procedure. Unorganized debate on "the state of the nation" was allowed to proceed freely during the consideration of appropriation bills early in the session. By steady use of the huge Democratic majority to suspend the rule pertaining to Calendar Wednesday, that cherished outlet for neglected measures has been practically suppressed. At no time during the session was there a call of committees, either during the morning hour or on Calendar Wednesday. During the first session, moreover, only eight Wednesdays were devoted to the call of committees. For most of the important bills considered in 1936, special rules were adopted.

The bill amending the Soil Conservation Act to provide a substitute for the unconstitutional A.A.A. was taken up under a rule granting five hours for general discussion, which time was later extended briefly by unanimous consent. Four hours of debate were permitted on the bill for immediate payment of the World War adjusted compensation certificates, and even then a quorum was maintained with difficulty. A similar period was allowed also on several others, such as the Patman price-discrimination measure. Bills like those on Mississippi flood control and interstate

[5] Requests like the following of Representative Taber of New York are frequent: "I ask unanimous consent to revise and extend the remarks I am about to make as well as those I have previously made today." *Record*, p. 9884. (All references, unless otherwise indicated, are to the unbound copies of the 1936 *Congressional Record*.)

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commerce in bituminous coal were considered two hours before being read for amendment under the five-minute rule. Quite frequently, rules were brought in permitting only an hour of general debate and stipulating that "all points of order against said bill are hereby waived." Six bills creating additional judgeships were considered under an omnibus rule allowing twenty minutes' deliberation on each.

Singularly enough, the measure on which the House voted most strictly according to party lines during the session was debated without benefit of special rule. The Representatives did not seem to understand the provisions of the Revenue Act of 1936. The Democrats accepted it as a cross that must be borne; the Republicans saw no hope of defeating the President's proposal. When the debate petered out, the members trooped into the House and put themselves on record as the party whips directed. Even though the measure was drastically altered in the Senate and greatly revised in conference, the conference report was adopted speedily on the next to the last day of the session by a similar procedure. The Republican attack, led by Mr. Treadway, was directed, not against the imperfections of the proposal, but against the practice of enacting statutes before the reports were printed and when scarcely any members understood their substance.[6]

Toward the close of the session, the rules were suspended on a few occasions. Several measures, such as the Ramspeck civil service and the ship subsidy bills, failed to obtain the necessary two-thirds vote. The latter bill, which had passed the House a year earlier and had been greatly altered in the upper chamber, was subsequently accepted by means of a rule which put the Senate version on its final passage without debate. The complaints of the minority that printed copies were unobtainable were of no avail.

One final specific illustration of legislative procedure ought to be mentioned. A minor House bill vesting maintenance of the Blue Ridge Parkway in the Department of the Interior was placed on the unanimous consent calendar among similar bills expected to pass after a cursory examination. Although this measure appropriated no money, it was attacked as a symbol of Presidential extravagance in the use of public funds. When H. R. 12455 was reached on the calendar, there was objection. When called the second time, there were sufficient opponents to have it stricken from the calendar. During the last day of the Congress, Mr. Doughton moved to suspend the rules and pass the bill, explaining that its failure would merely inconvenience the government in regulating the parkway and would not profit the opposition in any way. After forty minutes of debate on the motion to suspend, though interrupted by two

[6] *Record.*, p. 10284.

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quorum calls, the House leaders failed to muster the necessary two-thirds vote.

Later the same day, Chairman O'Connor of the Rules Committee came to the rescue with a rule which stipulated that if the rule were accepted H. R. 12455 would be considered as having been engrossed and read a third time, and that a vote would be taken immediately upon its final passage without any intervening motion except one motion to recommit. This "super-gag" rule was then attacked viciously by the Republicans, Representative Wadsworth claiming that it was the "gaggiest" rule he had encountered in his entire legislative experience.[7] Both the rule and the bill, nevertheless, were accepted. A few minutes later, Senator Glass arose in the upper chamber and asked unanimous consent to take up out of order H.R. 12455 "which has just passed the House." It was, he explained casually, "simply a local matter."[8] Within less than a minute the measure had unanimously passed the Senate.

In the Senate, debate proceeded in the customary unpredictable manner. Interspersed with speeches on the "bonus bill" were furious arguments over the cause of our entry into the World War and the character of Woodrow Wilson. During the brief debate on the Housing Act, Senator George complained that the Senate, after spending weeks on the tax bill, was, "with not more than two or three hours' debate, at the very end of the session" authorizing an expenditure comparable to the amount raised by the Revenue Act.[9] The highly controversial ship subsidy bill passed without a roll call. Frequently the elder statesmen laid aside their dignity to engage in ding-dong verbal battles over extraneous matters. On one memorable occasion, some even competed in reciting campaign ditties, mostly variations of the themes of "Three Long Years" and "Twelve Long Years."

The clôture rule was never invoked, though debate was limited on several occasions by common agreement. The prevalent mode of curtailing the flow of oratory and badinage was to make a vote on the pending business the order of the day at some future hour, and provide that in the interim no senator could speak twice nor more than a limited period, usually one-half or one-quarter hour, on the bill itself or any amendment. With the departure of Huey P. Long, the public demeanor of the Senate became more august and gracious. Senators consider it bad taste to imply criticism of an absent member, even if he has been notified of the intent. Votes are delayed to give interested members ample opportunity to

[7] *Record*, p. 10566. Mr. Snell also termed it "the acme of all tight rules" and the "rankest operation of the Rules Committee I have ever known in the House of Representatives." *Ibid.*

[8] *Record*, p. 10491.

[9] *Record*, p. 9712.

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prepare speeches. Bills are customarily "passed over" on the call of the calendar at the request of any member, even though he is absent and hopelessly in the minority. Senatorial courtesy, however, in the long run facilitates the business of legislation. By instilling confidence in one another's sense of fair play, a vast amount of minor legislation can be handled by unanimous consent.

One of the incidental objectives of the "lame duck" amendment was to eliminate the opportunity for filibustering when Congress approaches the end of a short session. That this hope will not be realized is now apparent. The incorrigible senator from Louisiana demonstrated this point during the first session, and numerous others repeated the proof during the second. A most unusual application of lung power was the Senate filibuster to coerce the House into acceptance of the ship subsidy bill. A group of senators led by Mr. Black united to prevent final action on the postal appropriation bill until the obnoxious practice of subsidizing a merchant marine by means of exorbitant payments on ocean mail was replaced by a more direct and equitable scheme of grants. Though Senator Glass expostulated that this method of applying pressure was highly illogical,[10] the result was satisfactory to the participants. To break the Senate deadlock, the House capitulated and passed the new ship subsidy proposal. A few hours later, Senator Holt began to filibuster against the revised Guffey coal bill. Again success came, for majority leader Robinson interrupted to offer the resolution to adjourn *sine die*.

There continues to be little real deliberation in the House of Representatives. The brain work of the House is not done in public session, but in committees. When committee members disagree, the full House must arbitrate between them, but the arguments pro and con are ordinarily furnished by the committeemen. Rarely is a perfecting amendment on a major bill accepted which does not originate with a member of the committee which studied the bill. While committee members also dominate the discussion of a bill in the Senate, there is more general participation. Defects are discovered and remedied on the Senate floor. One gets the impression that occasionally a senator is converted by the argument of his colleagues. Nevertheless, as in the House, most of the constructive work is accomplished in committees. It is there that such measures as the Wagner Housing Act and the ship subsidy bill germinated. As a result of hearings on the proposed Revenue Act of 1936, several senators became convinced of the evils of the measure as it passed the House. Out of the Finance Committee came an almost new bill which passed the Senate despite White House preference for the House version.

Conference committees, however, made necessary by the disagreeing votes of the two legislative chambers, remain a powerful Congressional

[10] *Record*, p. 10298.

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agency. Meeting privately, with their deliberations unrecorded, the conferees are in a position to influence legislation greatly. While Mr. Garner occasionally appointed younger men who would give a more stalwart defense of the views of the Senate, the conferees were usually veteran party leaders who by seniority had risen high on their respective committees. During the session, differing provisions of House and Senate bills were successfully reconciled by conferences in 52 instances. Three measures, including the revised Food and Drug Act, were left in conference upon final adjournment.

There was no standard pattern for the composition of conference committees, although the House and Senate were equally represented on 29 of the 52 committees. In 19 instances, there were three on a side; in nine cases, both chambers had five representatives; for the Revenue Act of 1936, there were 16 conferees, evenly apportioned. On 20 committees the House had the greater representation, ranging from six to five in six cases, and seven to five in four cases, to nine to five on the first deficiency appropriation bill, and seven to three on the independent offices appropriation measure. On four conference committees, there were more senators than representatives. Of the measures which successfully passed the conference stage, all became law except eight. Of these, six were vetoed, one was stranded in the Senate by a motion to reconsider, and the other, the anti-lobbying bill, was laid on the table in the House as a result of a swift reversal of sentiment due to outside pressure. To attain complete agreement between the houses, it was necessary to send four appropriation bills to conference more than once.

Much may be learned of the use of conference committees by a study of the corporation surplux tax proposal, the Revenue Act of 1936. Throughout the Senate debate, Senator King, who piloted the measure in the absence of Senator Harrison, headed off discussion by stating: "The amendment may go to conference."[11] His object was to get the bill through the Senate quickly and into conference. There it could be pruned of undesirable appendages and generally overhauled. The advocates of several proposed amendments pleaded merely that these "be permitted to go to conference." On one occasion, Senator George stated: "It has been agreed upon the part of the committee to accept this amendment for the purpose of taking it to conference."[12] Later, speaking as an individual senator, he offered another amendment, saying: "I realize that there

[11] *Record*, pp. 9214, 9226.

[12] *Record*, p. 9201. A few minutes later, Mr. George offered an amendment saying: "I offer the amendment for the sake of having it go to conference so that it may be there considered, although I do not commit myself to it." Mr. King answered: "For that purpose only I accept the amendment so that it may go to conference. *Ibid.*, p. 9230.

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are some objections to the amendment, but I should like to ask the acting chairman to let it go to the conference so that it may be there studied, and if found meritorious, that it may be placed in the bill."[13] Only in a few instances did the Senate leaders refuse to accept an amendment to be taken to conference.

In one particular instance, the reverse strategy was successfully employed. Senator LaFollette and other friends of the bill as passed by the House withdrew an amendment in the Senate, hoping thereby to increase their chance of getting it accepted in the conference report. They reasoned that an almost certain adverse vote in the Senate would commit the Senate conferees against the proposal, thus making it more embarrassing for them to accept it in conference. Senator Norris ridiculed this evasive tactic, and urged that the amendment be voted on. He did not prevail; the conference report eventually contained the LaFollette proposal. It was alleged that this result was obtained by "packing" the conference committee with friends of the House bill.[14] Eight men, an extraordinarily large contingent, were selected to represent the Senate. Senators Couzens and Keyes resigned promptly, desiring not to be associated in any way with the legislation. Substitutes were appointed a day later.

Enduring many vicissitudes and tribulations, the conferees, after a White House visit, came to an agreement. Most of the Republican members preferred to spend their time at the national convention; none from either house signed the conference report. In the House, Representative Treadway explained: "Along with my Republican colleagues on the conference committee, I refused to sign the conference report on this measure. We did not wish to have our names in any way connected with this unfortunate legislation."[15] Senators George and Walsh of the Democratic majority signed the report, as the latter carefully explained, "because we did not want to appear in the rôle of obstructionists. We signed the conference report with the understanding that we would have an opportunity to present in writing our views; namely, our objections to certain features of the report."[16] The five House Democrats who signed the conference report voted to accept it. Of the five Senate Democrats who signed, Senator Walsh ultimately voted against the bill, and Senator George was recorded as "unavoidably detained" from the Senate. This bit of legislation affords a remarkable illustration of the power of the conference committee. The bill as it emerged from the conference was a revised Administration measure, allegedly written by two Treasury experts.[17] In both

[13] *Record*, p. 9230.
[14] *Record*, p. 9405. Speech of Rep. Lamneck in House.
[15] *Record*, p. 10284.
[16] *Record*, p. 10316.
[17] *Record*, p. 10285. Denouncing the conference report on the tax bill before it

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houses the conference report was accepted before printed copies were available.

President and Congress. Sensitive to criticism for alleged usurpation of legislative power, and having already seen enacted into law most of his suggestions for major reforms, President Roosevelt apparently intended to give Congress less guidance in 1936 than during the three previous years. His annual message on the state of the Union contained no explicit requests for legislation. Every opportunity was utilized to praise the Congress for performing so patriotically its arduous labors. Irrespective of any inward feeling of rebellion that may have possessed Democratic congressmen, all knew that in a national election year there was strength in a unified party. Mr. Roosevelt sought to make their political duty of "standing by the President" as painless as possible. The average Democratic legislator was aware, nevertheless, that loyalty to the head of the party was compulsory when facing his constituents in a party primary. These primaries were definitely on their minds; many had premonitions of the fate that would befall Senator Gore in Oklahoma. The President had captured the imagination of the Democratic voters; his faithful servants, such as Byrnes of South Carolina, Harrison of Mississippi, and Robinson of Arkansas, would be greatly aided in their campaigns for renomination and reëlection. Lukewarm New Dealers like Senator Russell of Georgia found it wise to become more ardent in their devotion to the President when confronted with opponents like Governor Talmadge. As the session progressed, spring primaries in several states demonstrated empirically the accuracy of these deductions.

To this general display of fealty to the President there was one notable exception. When the legislators were compelled to choose between the President and the conflicting demands of the united organizations of ex-soldiers, the attempt at party harmony was abandoned. By general agreement, the President dropped the reins and every man scrambled to political shelter as he thought best. The President, running nationally for reëlection, could not stultify himself by approving the "bonus" bill. Seeing that its victory was inevitable, however, he abandoned his heroic technique of the previous year, when he had appeared dramatically before Congress with a brilliant veto message, and merely sent a laconic note announcing that he had not changed his mind. The Democratic congressional leaders, many of whom were now actively sponsoring the Vinson bill, running locally for reëlection in areas where the ex-service organizations frequently held the balance of political power, found it prudent to vote to override the President's veto. By this method of playing both ends

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was submitted in the Senate, Mr. Vandenberg claimed that it was "essentially a new bill." *Ibid.*, p. 10186.

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against the middle, perhaps both the President and his cohorts could live to fight another day.

During the session, the Chief Executive returned without his approval 39 House bills, one House joint resolution, and 44 Senate bills. Except for the bill providing immediate payment of the adjusted compensation certificates, the Congress successfully challenged no presidential veto. One futile attempt was made on a House private bill. Of the vetoes, 34 were of the pocket variety. During a four-year term, Mr. Roosevelt had two public laws enacted over his veto, compared to three each for Hoover and Coolidge.

The policy of holding the reins loosely over Congress, however, could not endure after the catastrophic decision of the Supreme Court derailing the New Deal farm program. Two important measures had to be drafted and forced through Congress. A new method of compensating farmers for compliance with the Administration crop control regulations had to be established; and also a new means of financing this program had to be evolved as a substitute for the invalidated processing taxes. Complete bewilderment prevailed for several days after the Court rendered its verdict. Congressional leaders conferred helplessly; White House conferences produced no tangible results. Secretary Wallace and Administrator Davis called farm organization leaders together to profit by their collective wisdom and solicit their united support. After two weeks of strenuous activity centering around Mr. Wallace, the President endorsed the device of achieving crop control by a new use of the Soil Conservation Act of 1935. This became the Administration's substitute farm program. The necessary legal alterations were rushed through Congress and signed by the President before the first of March. Secretary Wallace and the farm leaders drafted the legislation, the President blessed it, and Congress made it the law of the land. In several respects, the procedure resembled British parliamentary practice.

When the President submitted the 1937 budget in January, it was approximately in balance except for the large relief item. After the bill for immediate payment of the veterans had become law, and $500,000,000 in processing taxes denied the government by judicial decree, the Administration's fiscal policies had to be revised. Congressional leaders dreaded presidential interference with their plans for increasing revenue and were, consequently, much disturbed by the announcement that a message proposing new taxation was in the offing. Nothing is more distressing to a congressman than the necessity of voting new tax levies in an election year. The President, however, without consulting even the members of the House Ways and Means Committee, sent to the Congress a forceful message demanding new tax legislation. Amidst protestations that the responsibility for such measures properly rested with the Congress, Mr.

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Roosevelt gave specific instructions as to how the money could be raised without the loss of many votes. The amazed representatives quickly swallowed their pride and seized upon the plans evolved by the Treasury experts.

The President's message suggested three sources of revenue: (a) a temporary levy at low rates upon the processing of a wide range of agricultural products; (b) a "windfall" or "unjust enrichment" tax aimed at those processors who had profited greatly at the expense of consumers as a result of the Supreme Court's decision in the Hoosac Mills case; (c) a heavy permanent or continuing tax upon undistributed corporation profits; and a repeal of the exemption of dividends from normal rates on individual incomes. This was to be substituted for all existing corporation levies. The latter two suggestions were defended as means both of securing easily large amounts of revenue and of accomplishing desired social objectives. Large corporation surpluses were attacked as contributory to tax avoidance and unwise speculation. Corporations were to become sluiceways through which profits would flow directly to stockholders to be taxed, unless heavy penalties were incurred in order to retain them as surplus.

The House Committee on Ways and Means held extensive hearings. Treasury officials and a Brooklyn Communist defended the measure; all others gave negative opinions as to its value. The committee, however, eliminated the processing tax features, but otherwise reported the bill practically as desired by Dr. Herman Oliphant, special counsel to the Treasury. Most of the House members, unable to comprehend the complicated rates and involved economic theories of the measure, and conscious only of its general political implications, absented themselves from the floor during the debate. It was passed by a vote of 267 to 93. Four Republicans were registered in its favor; 11 Democrats jumped the party traces.

During the Senate hearings, those opposing the House measure put on such an effective compaign of criticism that an entirely new bill was eventually drafted. More proof was afforded that existing methods of party discipline are not effective in the Senate after patronage has been dispensed. Only one-third of the members have to face the electorate each biennium, further weakening the power of party control. White House conferences failed to bring results. Furthermore, the President insisted on one thing only—that the money be raised. Rather than make an issue of the method, he preferred to take his chances with a friendly conference committee during the rush for adjournment.

The revenue measure as passed by the Senate accepted the "windfall" tax, but imposed only a mild levy at a flat rate on undistributed earnings. The additional revenue was to be obtained mainly by increasing the exist-

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ing tax on corporate income, repealing the exemption from the normal rate of four per cent when distributed as dividends, and increasing by one per cent the surtax rates on individual incomes in brackets from $6,000 to $50,000. The conference committee, under Executive influence, achieved a compromise measure which contained features of both bills without subscribing completely to the principles of either. From the House bill was taken a graduated tax on undivided profits, for which the President had chiefly contended; from the Senate bill was retained a graduated tax on all corporate income. The "windfall" tax was in the final bill, as was the repeal of the exemption of individuals from the normal rate on corporation dividends. The increase in individual surtax rates was abandoned, so bountifully did the other features of the compromise measure promise to supply revenue.

Thus in a typically American fashion was the measure passed. The President supplied the propulsive energy and the basic ideas. The Congress, however, especially the Senate, did more than "perfect" the measure. At times the deadlock between the two branches was so serious that some commentators expected the project to be abandoned. Only by the signature of two men who opposed the act were the Senate conferees able to bring back a report. The measure afterwards became a political issue. Mr. Roosevelt's opponent for the presidency called it "cockeyed," and promised to advocate its repeal when and if elected. That it is peculiarly the President's handiwork cannot be denied; he must be held responsible for its political and economic consequences.

Congress and the Courts. The issue of judicial veto of congressional enactments arose long before the second session of the Seventy-fourth Congress; but its revival in an acute form was precipitated by decisions in the Hoosac Mills and Tipaldo cases which upset the national A.A.A. and a New York statute providing minimum wages for women. The result of the latter decision was to establish with regard to minimum wage legislation a "no man's land" in which neither federal nor state governments had legal jurisdiction. Whereas much of the resentment during the early part of the session was confined to the Democrats, the minimum wage decision also displeased the Republicans. It was so patently unpopular that Democratic attacks on the high court, both real and alleged, could scarcely be made a Republican campaign issue. Representative Fish was alarmed at the putative loss of two million Republican votes. Both presidential candidates, in differing verbiage, announced a willingness to alter the law by constitutional amendment should no means of circumventing the Court's ruling be discovered.

Many speeches were made during the session on the topics of "judicial usurpation" and "constitutional government." The claim was revived frequently that Congress was as competent to interpret the Constitution

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as the nine superannuated gentlemen of the Supreme Court. History was reviewed tirelessly and with much pedantry to prove that the Court was exceeding its just authority. To Republican charges of executive dictatorship some Democrats countered with cries of judicial tyranny. Others introduced lists of all acts ever invalidated to show that the Republicans had passed a majority of acts declared unconstitutional. Critics, temporarily mollified by the T.V.A. decision, greatly extended their activity toward the end of the session. The legal solons of the Senate, from Borah and Norris to Bilbo and Minton, debated the question inexorably.

Because of popular reverence for the existing Constitution, both Mr. Roosevelt and the congressional leaders, all expecting reëlection, preferred to alter slowly its meaning by judicial interpretation rather than face the people with a plea for a formal amendment. Roosevelt "luck" has been missing with respect to the Supreme Court. In office nearly four years, he has yet to make his first Supreme Court appointment. Furthermore, great difficulty was experienced in phrasing an amendment which would make the national government adequate to current exigencies without actually destroying the federal system. Among the many proposed amendments introduced in Congress, Mr. Ashurst, chairman of the Senate Judiciary Committee, and ordinarily an Administration spokesman, submitted the following: "The Congress shall have power to make laws to regulate agriculture, commerce, industry, and labor."[18] That he was not speaking for the President might also be assumed from his accompanying speech. He stated: "If additional power be needed by Congress in order to enact social legislation, we must secure authority from the source of governmental power, the people themselves, by constitutional amendment, and not by insisting that the Supreme Court shall make strained constructions and interpretations of the Constitution."[19] No proposal for constitutional amendment was reported out of committee during the session.

Not only did the Court take seriously its duty of enforcing restraints on the legislative power, but Congress made effective use of its prerogative of impeachment and removal. On January 10, 1936, four days after the Hoosac Mills decision, Representative Green of Florida impeached United States Judge Ritter of the Florida district, a Coolidge appointee. The judge was charged with abuse of judicial power, favoritism, oppression, and judicial misconduct. Several specific offenses of a serious nature were enumerated. He was accused of allowing exorbitant attorney's fees, especially to friends and an ex-partner, of arbitrary disregard of higher court rulings, and of collusion with attorneys who appeared before him. One indictment was that Judge Ritter had accepted from A. L. Rankin,

[18] *Record*, p. 9390.
[19] *Ibid.*

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his former law partner, $4,500, allegedly part of a fee of $75,000 which he had allowed Rankin in a receivership appointment made in his judicial capacity.

On March 2, after a vigorous debate, the House approved seven articles of impeachment by a vote of 181 to 146. Seventy-nine of the 87 Republican votes cast were against impeachment; the Democrats were in favor of impeachment by nearly three to one. The formal trial of Judge Ritter took place in the Senate over a month later, and lasted about ten days. A committee of representatives prosecuted the case in the name of the House; the defendant employed competent private counsel. The senators sat as a jury, but frequently interposed pertinent questions. After the testimony of all witnesses had been heard, and the prosecution and defense attorneys had made their pleas, several senators reviewed the evidence and gave their opinions on the question of removal. Senator Borah asserted that it was unnecessary to prove specific crimes; it was sufficient grounds for removal if Mr. Ritter's conduct was unbecoming to his judicial position. This view ultimately prevailed. Although Judge Ritter escaped removal by a single vote on the first of six specific allegations, he survived until the vote on the seventh article, a blanket indictment charging him with behavior unworthy of his office. On this article the necessary two-thirds vote was obtained, 56 to 28. The Senate then decided that Mr. Ritter should not be ineligible to hold any future federal office of "honor, trust, or profit."

The removal of Judge Ritter in a case where illegal action could not be proved in a court of law seems to indicate that the Congress has decided that judicial officers must remain above reproach. Mere avoidance of technical criminality is no longer sufficient to evade removal. The Congress may also have been motivated by the desire to warn the judiciary that higher standards must be maintained, and that it will interpret liberally its power of impeachment and removal.

Congress and Minorities. While the practice under the present Administration of granting to the President a considerable degree of discretion in the expenditure of huge sums of public money has tended to shift the focal point of some lobbying from the Capitol to the White House, there was ample evidence during the past session that representatives of special interests have not deserted the legislative chambers. With respect to such measures as those pertaining to veterans, public utility holding company regulation, and the taxation of corporate surpluses, the basic contest has been between the minorities and the President. The Congress has had the onerous task of acting as an arbitral tribunal. Witnesses, both for the Administration and ex-soldiers or corporations, appear before congressional committees to give oral testimony and file statements; but a committee decision is often motivated more by fear of the coercive politi-

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cal weapons of the protagonists than by their rational arguments. The instruments of party discipline in the hands of the President are weighed against the financial contributions or mobilized voting strength of the minorities.

With respect to neutrality legislation, the steady pressure of isolationists and internationalists caused Congress to evade a decision by continuing existing legislation until the coming session. Sometimes the executive department, particularly under the New Deal with respect to farmer and labor groups, has accepted organized minority proposals intact and added Administration endorsement. When the executive department, the high guardian of the national interests, accedes to the demand of a minority or sectional interest which is strongly organized, Congress usually capitulates promptly. This has been true recently with respect to agricultural programs. After the Supreme Court invalidated the A.A.A., originally framed and sponsored by leaders of agrarian organizations, the Administration, operating through Secretary Wallace, acted with celerity in convoking a new assembly of farm leaders. The Administration conceived its task to be the formulation of a revised agricultural program for which this organized economic and sectional minority would present a united political front. When this objective was achieved after two distressing weeks of interminable negotiation, the new farm policy needed only a press conference endorsement from the President to set in motion the legislative machinery. The farm leaders testified briefly before the appropriate Senate committee; the House committee decided against the delay that would be occasioned by public hearings.

Corporation executives could not help but notice the contrast in procedures when the necessity arose for replacing the processing taxes. Organizations of tax-payers were not consulted; there was no endeavor to obtain a consensus of opinion among them as to the most efficacious means of replenishing revenue. Treasury experts privately concocted a scheme which would not only furnish the money, but have far-reaching social consequences. This legislation reverted to the other type; again Congress had to choose between the Administration and those affected most directly by the legislation. The House yielded to Administration pressure; the Senate was impressed by the stand of the corporation executives, though some senators opposed the measure ostensibly because certain large corporations which now disburse their total net earnings in dividends would escape taxation. The final result was a conference committee compromise between the corporation leaders and the Treasury experts, with the latter apparently the happier.

In years of presidential elections, a large minority with well disciplined voting strength seems to be almost invincible in Washington. Particularly in election years have the organizations of ex-soldiers thrived, frequently

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by overriding presidential vetoes. The bill for immediate payment of the 1945 value of the adjusted service compensation certificates failed to pass over the President's veto in 1935 due to the doughty resistance of a minority of senators. The number of opponents of the measure dwindled, however, in this election year. Furthermore, some objectionable features of the 1935 Patman bill providing currency inflation had been removed, thus giving certain gentlemen an additional excuse for supporting the revised bill. The greatest factor favoring the 1936 measure, however, was its unanimous endorsement by the three leading organizations of ex-service men. Debate in the House clearly showed numerous members to be elated that they could now vote for the Vinson-Patman-McCormack bill and simultaneously please all. They rejoiced openly because it was no longer necessary to choose between the plans of the Veterans of Foreign Wars and the American Legion.

The only time during the session that the entire membership of the Senate was present and recorded was on the final "bonus" roll call.[20] Of the 19 senators who dared vote to sustain the President, 15 were not coming up for reëlection this year. The four others were Glass, Couzens, Keyes, and Hastings. Senator Glass was running for reëlection without opposition. Senators Keyes and Hastings had announced their retirement, though the latter was afterwards prevailed upon to accept a renomination from the conservative faction of Delaware Republicans. Senator Couzens, with his typical disdain for political considerations, voted in accordance with his convictions. Because of his independence, he was later retired by the Republicans of Michigan, the only Republican senator to fail of renomination.

The power of organized labor was revealed steadily throughout the legislative session, though it was at no time dramatized as eloquently as that of the farmers and ex-warriors. There were, however, two clear illustrations of the potent influence of the leaders of organized labor. After the Walsh-Healey bill, regulating the conditions of employment of all firms receiving government contracts, had been secluded in the House Judiciary Committee for ten months, William Green, president of the American Federation of Labor, wired the following message to members of the Committee: " . . . Labor is tremendously interested in this bill and firmly expects it to be enacted into law before Congress adjourns. For this reason, I respectfully urge you to be present at meeting of the Judiciary Committee tomorrow morning, as herein stated. Your absence from this meeting will be construed as opposition to the measure and as being unfriendly to labor. Our representative will be present at tomorrow

[20] Vice-President Garner announced before stating the result that it was the first time during his tenure as presiding officer that the entire elected membership had been present and voting.

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morning's meeting. Do not fail us. Be present."[21] The Judiciary Committee (could it be by mere coincidence?) reversed itself with alacrity and favorably reported the bill. The House gave its approval without a roll-call.

As a consequence of the committee investigation of lobbying against the utility holding company regulation measure of 1935, a comprehensive anti-lobbying bill was drafted in 1936 and accepted in different forms by both houses. The House and Senate conferees amicably adjusted their differences, and prospects were bright for the first national anti-lobbying law. When the conference report came up for a vote in the House, however, it was discovered that the legislative agents for the American Federation of Labor had become alarmed lest their activity be constrained. It had been assumed naïvely that a "good" anti-lobbying bill would hamper only the emissaries of "vicious interests," predatory wealth, huge corporations, and the National Manufacturers Association. When it was bruited about that this measure might be used to compel labor lobbyists to register and give sources and amounts of their income, and when Representative Connery stated that he had just visited William Green and found him absolutely opposed to it,[22] the measure then became "infamous." The author, Representative Smith of Virginia, tried vainly to show that the provisions were equitable; the House voted 264 to 77 to reject the conference report, killing the legislation.

Politics. For many years, American political organizations have been coalitions of sectional *blocs* rather than national parties. In 1928 and 1932, there were two or more Democratic legislative parties united in one national organization in the hope of winning control of the executive branch of the federal government. Similarly, it can be said that there are Eastern and Western Republican parties regularly contending for possession of the national Republican organization. To obtain national power, these parties must unite on one presidential candidate and one national chairman. They must draft a declaration of principles acceptable for national purposes. There is, however, no national machinery for selecting candidates for legislative positions. The party faith is pledged by the candidate for Chief Executive who has, however, no control over the nomination of those whose votes are indispensable to enact such a program into law.

Presidents running for reëlection dictate national platforms and tend to weld the heterogeneous elements under their banners into a national party. President Roosevelt has done much to give a new definition of the term "Democratic." Though he still receives the nominal support of some legislators who differ over the current Democratic philosophy, others who attained national prominence as Democrats recently found it necessary to oppose the official party nominees. Many congressmen were elected

[21] *Record*, p. 10088.
[22] *Record*, p. 9858.

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on the Democratic ticket in 1932 by a sullen electorate seeking revenge against Mr. Hoover for their desperate economic plight. The Democrats then, as the Republicans in 1936, were united solely by a common enemy and desire for public office. The congressional election of 1934, though still conducted in some areas as a fight against the Old Deal, was elsewhere a referendum on Mr. Roosevelt's new version of Democracy.

The election of 1936 probably will have a tendency to unify the Democratic party further. Few Democratic candidates for Congress can run successfully for office with unique interpretations of the party platform. If they differ radically from the President, and survive the primaries, they have little chance of election save in incorrigibly Democratic areas. Those wearing Republican labels, however, are not considered bound by Mr. Landon's interpretation of the party platform. Senators McNary and Borah conducted their campaigns for reëlection on their own personal records, maintaining a profound silence on the question of the presidency. Although most of those who differed greatly with the Republican platform, such as Senators LaFollette and Norris, discarded that party label, there were a few legislators from the West who sat on the Republican side of the legislative chambers but who asked for reëlection because of their support of Mr. Roosevelt. There were also a few legislators, both Democrats and Republicans, seeking reëlection who had pledged fealty to Father Coughlin and the Lemke candidacy.

These discursive remarks on the nature of American parties are aimed to aid in understanding the actions of congressmen during the last session. With rare exceptions, the legislators were obsessed by thoughts of the approaching elections. Even those senators whose terms did not expire knew that they would be compelled to commit themselves definitely on the major political issues and candidates. The political note was struck during the first hour of the session by the President and held consistently by all until the hour of adjournment.

The Constitution states that the President "shall from time to time give to the Congress information on the state of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient." When radio technicians came to install broadcasting apparatus in the lower house, the House leadership first learned that Mr. Roosevelt had made arrangements to have the traditional annual message to Congress received simultaneously by the American people. Furthermore, the best evening radio hour had been reserved, necessitating a night session of Congress and breaking numerous precedents. Chairman Fletcher of the Republican National Committee instantly cried "politics," and demanded comparable radio facilities for a Republican reply.

A serious controversy developed between Mr. Fletcher and the broadcasting officials, who insisted on distinguishing the President of the United

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States from the Democratic candidate for reëlection. When Mr. Roosevelt spoke in the former capacity, regardless of the tenor of his talk, it would be carried free by the companies as a public service. Furthermore, radio time would not even be sold to the Republican National Committee. The radio companies had agreed not to carry political speeches for profit prior to the national conventions, but to grant free use of their facilities as suitable occasions developed.

The furious exchange of telegrams between the Republican chairman and the broadcasting officials not only illustrated the need for a further clarification of the respective rights of the radio owners, government officials, party managers, and the general citizenry with regard to the use of broadcasting, but also illuminated another important problem. Who was entitled to give the official Republican answer to Mr. Roosevelt? Representative Snell and Senator McNary headed the minority hierarchy of legislators. Ex-President Hoover, as the last Republican nominee for President, was customarily considered the titular party head. Henry P. Fletcher, however, had been selected as chairman of the national party organization by the Republican National Committee at a Chicago meeting in June, 1934. Furthermore, prominent Republicans like Senators Borah and Johnson, or Representatives Lemke and Marcantonio, would dispute the right of any one of these leaders to speak for them. The National Broadcasting Company, however, shortly after the President spoke allotted some time to a Republican speaker to be designated by Chairman Fletcher.

Republican leadership in the House, fully cognizant of the power of the large Democratic majority to suspend the rules, reluctantly consented to an evening session. Mr. Snell protested: "I also appreciate that the present majority will, as it has many times in the past, break all precedents in order to carry out the orders from the White House. If you gentlemen carry out this order, in my judgment, you will not be properly performing the duty that rests upon the majority in protecting the dignity and prerogatives of the House."[23]

Those who predicted that the President's speech would be political were not disappointed. Recommending no legislation, he delivered an impassioned indictment of the enemies of the New Deal. Since his attack was directed mainly at those who possessed economic power, he was widely accused of fomenting class hatred. Furthermore, the ovation tendered him by his Democratic colleagues and the packed galleries gave the event, especially to radio auditors, every appearance of a political rally. From this beginning, Congress continued to weigh political considerations most heavily, though probably not to the same extent as in 1932.

[23] Bound *Record*, p. 6.

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On no roll-call during the session was there a perfect division between the two major parties. While it is customary for all members wearing the same label to vote together to control the House or Senate organization, so that each may prosper in committee assignments, congressmen aim primarily to please their constituencies when legislation is involved. The closest approaches to purely "political questions" were the amendment to return the control of relief to the states, and the Revenue Act of 1936. The first, aimed directly at Democratic control of relief expenditures, was consequently opposed by all but one Democratic senator and five representatives. The Republicans were more evenly divided, as some could not see the advantage of turning from federal control by Democrats to state control by Democrats in whom they had even less faith.

On the tax bill, it was easier for the Republicans to approach unanimity. Only four in each chamber gave their support to this New Deal measure. In the Senate, 18 Democrats opposed the conference report; in the lower chamber, 22 Democratic representatives crossed party lines. Practically every other major question on which a record vote was taken showed that sectional, economic, and personal considerations superseded for many legislators the orders of the party whips. Nevertheless, with armies of varying dimensions due to constant desertions and enlistments, the Republican and Democratic House leaders conducted all major battles with barrages of partisan jibes, boasts, and threats. Guerrilla warfare was more prevalent in the Senate. While the majority leadership usually had a dependable array of warriers in New Deal uniform, there were many Democratic snipers in the unorganized opposition.

Numerous bills extending the merit system in the civil service were introduced during the session, some by members of each party. After the Republican convention had publicised the question, Representative Ramspeck moved to suspend the rules and pass a measure putting presidential postmasters in the classified service. He claimed to have Administration endorsement for his measure, yet the Rules Committee did not come to his aid. Republican opposition to suspension of the rules developed quickly. Any increased application of merit in the civil service would redound to the benefit of the party that had the greatest number of incumbents, even if all were compelled to take a competitive examination to retain their positions. Moreover, if the bill were passed, a useful political issue would be eliminated. Consequently, 56 Republicans united with 56 Democratic opponents of the merit system to defeat the motion to suspend. Twenty-seven Republicans joined with 171 Democrats in attempting to enact the legislation. After Congress had adjourned, the President accomplished the chief purposes of the bill, including those political, by executive order.

The *Congressional Record* contains an amazing quantity of material

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on virtually every American social problem. In this valuable source-book may be found all data considered useful by partisan legislators. Whenever a congressman makes an address, especially over the radio, his words are promptly embalmed in the *Record* as extensions of remarks. Any address or article on a public question may find its way to the *Record*. Probably more words originally uttered by James A. Farley may be found in the 1936 *Record* than of any one senator. Publication of the last issue of the *Record* was delayed until July 9 so that it might contain the platforms of all parties and the chief addresses made at the various national conventions.

The representatives profit from inserting eulogies of themselves into the *Record* as extensions of remarks. Thus, one finds an eight-page speech headed: "What Blanton's Twelve Counties, Seventeenth District, have Received from Government since 1933"; and briefer notices entitled: "What the Roosevelt Program has Meant to my District", and "Mississippi and the New Deal." A more subtle method of self-appreciation is to have a friend insert glowing words of praise. Thus we have an extension of remarks by Representative Ludlow entitled "Hon. Glenn Griswold, the Veterans' Friend", and one by Sam McReynolds on "The Legislative Achievements of the Hon. John J. Dempsey, of New Mexico." The keen contest for Negro votes in the North was presaged by the insertion of a score or more of speeches relating to the colored race and the New Deal. While the legislator must pay for printing extra copies, the congressional frank suffices to flood the country with reprints of these undelivered speeches. Postage is saved and some voters are fooled.

A study of a session of Congress involves a test of one's faith in democracy. A democrat may be repelled by the inevitable delays, confusion, quorum calls, petty bickering, cheap oratory, filibusters, and lack of resistance to organized minorities. Can this inefficiency in serving the whole people be justified by pointing to the dreadful alternative of arbitrary action under a dictator? Is there no way of making our legislative bodies more efficient without making them less representative? Is it prudent to delegate discretion to the President over more governmental functions? Must we choose between executive-made tariffs and congressional log-rolling? Is there no *via media?* These questions are raised by such a study, but the answers are not indicated in the annals of the second session of the last Congress.

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The Status of Cities under Recent Federal Legislation. Final adjournment of the Seventy-fourth Congress, which like its immediate predecessors turned out a substantial grist of bills affecting cities, brought into focus once again the question of what is happening to our "sovereign

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states" and their political subdivisions. Federal contacts with cities are not, of course, an entirely new phenomenon in the United States. For a number of years prior to the depression, certain federal agencies had maintained informal contacts with municipal governments by offering them services, information, and advice, and such services are still being utilized. Until July, 1932, however, with the passage of the Emergency Relief and Construction Act, congressional statutes had never touched municipal governmental functions except indirectly through grants-in-aid to the states, the federal government had never entered into important contractual relations with cities, and Congress had never sat in legislative session to deal with the problems of cities as political units.

Attempts to foresee the future of our federal system of government have, therefore, been of especial interest to political scientists since the nation reached the trough of the depression. Forecasts have run the gamut from an ultimate, thoroughly-planned United "Regions" of America[1] to a centralized government on the Potomac which would mean the strangulation of local self-government. The first-mentioned possibility is admittedly remote. The second is sometimes declared to be imminent, or at least to be foreshadowed by a "regrettable" tendency on the part of the federal government to go "over the heads of the states to deal directly with the cities."[2] Close study of the myriad of new relationships which have developed between the federal government and the cities seems to show, however, that the fears expressed for the future of local autonomy and local responsibility may well be needless.[3] To cite and explain the long list of specific enactments and rulings by which the federal government has placed itself in direct contact with cities is not the purpose of this article. A few salient examples may serve to indicate, however, that the federal government has not used the depression as a convenient anvil on which to hammer out a new unitary state.

The new era of direct and formal federal-municipal relationships which made its entrance in 1932 has been characterized by developments on scores of different fronts. Three major types of new relationships, comprising the activities of the federal government in bolstering municipal finance and credit,[4] federal grants for public works projects of municipali-

[1] *Regional Factors in National Planning*, a report of the National Resources Committee (Washington, D. C., December, 1935). Also James W. Fesler, "Federal Administrative Regions," in this REVIEW, April, 1936.

[2] W. Brooke Graves, "The Future of the American States," in this REVIEW, February, 1936.

[3] *Recent Federal-City Relations*, by Paul V. Betters, J. Kerwin Williams, and Sherwood L. Reeder. U. S. Conference of Mayors, Washington, D. C. 1936. *Supplement* published June, 1936.

[4] Emergency Relief and Construction Act of 1932 (Pub. No. 302, 72nd Cong., July 21, 1932) providing for loans to states and political subdivisions for relief and

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ties,[5] and federal financial aid in meeting municipal relief burdens,[6] in most instances owe their origin largely to the economic depression. On the other hand, the growing complexity of our economic life and the broadening conception of the duties of government, coupled with the inelasticity of local revenues, account for a number of other important federal-city contacts. Such developments are the new federal-municipal coöperation in crime control,[7] federal utility and power policies touching city governments,[8] the federal social security program to aid communities

for "self-liquidating" projects; Federal Municipal Debt Readjustment Act (Pub. No. 251, 73rd Cong., May 24, 1934, extended by the 74th Cong.); Home Owners' Loan Act (Pub. No. 43, 73rd Cong., June 13, 1933), with its section providing for payment of delinquent taxes by the federal corporation; "pink slip amendment" (Pub. No. 40, 74th Cong., April 19, 1935) giving local taxing officials a means of preventing tax evasions; protection of municipal deposits through FDIC (Pub. No. 65, 73rd Cong., June 16, 1933), amended and liberalized in 1934 and 1935; exemption of municipal securities from registration requirements of Securities Exchange Act and fostering of municipal bond market (Pub. No. 22, 73rd Cong., May 27, 1933), (Pub. No. 291, 73rd Cong., June 6, 1934); exemption of publicly-owned power plants from electrical energy tax (Pub. No. 73, 73rd Cong., June 16, 1933); RFC loans to cities for flood rehabilitation (H. R. 11968, approved May 17, 1936); authorization of federal-local coöperation in flood control projects (H. R. 8455, approved June 19, 1936); et cetera.

[5] NIRA, Title II (Pub. No. 67, 73rd Cong., June 16, 1933); Emergency Relief Appropriation Act of 1935 (Pub. Resol. 11, 74th Cong., April 8, 1935); particularly certain phases of those programs which have special reference to cities, i.e., low-cost housing projects, federal grants and/or loans for municipal power plants, and the "emergency" outright grants to states, of which a certain percentage was required to be spent for roads, streets, bridges, and grade-crossing-elimination within municipal corporate limits.

[6] Emergency Relief Appropriation Act of 1933 (Pub. No. 15, 73rd Cong., May 12, 1933), with particular reference to the transient program which ended inter-city bickerings over the legal settlement of destitute persons; federal grants to support locally-run work-relief programs; the Federal Civil Works Administration which undertook numerous projects aiding city governments in codifying ordinances, assessing taxes, keeping records, repairing city buildings, etc.; the Federal Surplus Relief Corporation which distributed surplus commodities to supplement budgets of local relief clients; the Works Progress Administration (set up under Pub. Resol. 11, 74th Cong., Apr. 8, 1935); National Youth Administration; suburban resettlement housing projects on the outskirts of cities; etc.

[7] Among other examples are Pub. No. 232, 73rd Cong., May 18, 1934; Pub. No. 233, 73rd Cong., May 18, 1934; Pub. No. 235, 73rd Cong., May 18, 1934; Pub. No. 246, 73rd Cong, May 22, 1934; Pub. No. 376, 73rd Cong., June 18, 1934; Pub. No. 474, 73rd Cong., June 26, 1934; and the Federal Communications Commission's allocation of new wave bands to permit inter-city communication of police news (1936).

[8] For example, the Federal Power Commission's survey of electric rates in cities, authorized by Pub. Resol. 18, 73rd Cong, April 14, 1934; Tennessee Valley Authority power contracts with municipalities (under TVA Act of 1933, 73rd Cong., May 18, 1933); exemption of cities from registration requirements of Public Utility Holding Company Act (Pub. No. 333, 74th Cong., Aug. 26, 1935).

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in caring for destitute unemployables,[9] and the miscellaneous provisions such as federally-financed vocational training for municipal employees,[10] federally-supervised "free ports" operated by cities,[11] and federal aid to cities in planning parks and recreational areas.[12] These developments have taken place coincidentally with the economic crisis, but they are not strictly products of the depression and are not likely to disappear even if national prosperity should reach new high levels.

Despite their varying reasons for coming into being, however, all of the new federal-municipal contacts have one important characteristic in common. In no case has the federal government attempted to weaken or wear away the control of any state over its political subdivisions. No federal agency has been empowered to flout or disregard state constitutional provisions, state laws, or city charters in its dealings with municipalities. The new Washington policy of dealing directly with the cities has in many instances "short-circuited" the states, but it has done so without violence to state sovereignty. Furthermore, in cases of doubt regarding the applicability of state and local laws, the federal courts have upheld steadily the fullest measure of federal adherence to local requirements. Thus the city of Independence, Kan., was declared legally incapable of accepting a PWA power grant by mere majority vote, since its charter provided for a two-thirds vote before initiating any public construction project.[13] In a Missouri case likewise involving a PWA allotment for a municipal power plant, the federal appellate court denied the city's right to accept the funds because the construction regulations of that particular loan and grant agreement unlawfully delegated the powers of the city council to the Federal Public Works Administrator.[14]

The two federal activities which have aroused the greatest anxiety regarding federal usurpation of states' rights and danger to local self-government are emergency relief and public works. In both these fields, however, as in others too numerous to mention here, a strong case can be made out to demonstrate that state powers have not been interfered with, and that municipal officials have not been put in leading strings from Washington.

Relief. A knowledge of the background of the Federal Emergency Relief Appropriation Act of 1933 is helpful in understanding the precise

[9] Pub. No. 271, 74th Cong., April 14, 1935.

[10] George-Deen Vocational Education Act, Pub. No. 673, 74th Cong., June 8, 1936.

[11] Pub. No. 397, 73rd Cong., June 18, 1934. See article by the writer in *Public Management* for Feb., 1936, "New York City Establishes a 'Free Port.' "

[12] H. R. 10104, passed June 16, 1936.

[13] Kansas Gas & Electric Company v. City of Independence, Kansas. U. S. Circuit Court of Appeals, 10th Circuit, August 20, 1935.

[14] Arkansas Missouri Power Company v. City of Kennett, Missouri. U. S. Circuit Court of Appeals, 8th Circuit, August 15, 1935.

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nature of the federal government's relation to unemployment relief. The terms "relief" and "public assistance" have in this country traditionally conjured up pictures of local efforts to aid the destitute in their own communities. In normal times, these destitute are almost entirely the "unemployables" of a locality—the blind, aged, crippled, or mothers with dependent children. The recent economic crisis, however, threw upon public charity a large new group of persons who had never before been public charges. These persons were employables, destitute because of a nation-wide economic collapse. Local poor-law administrators struggled at first to cope with the enormous new problems, but the drying-up of private charity and the dwindling of state and local revenues forced the federal government to come to the rescue. The Emergency Relief and Construction Act of 1932 made a $300,000,000 loan fund available to those states, counties, and cities which were in a position to borrow, but in the following year the policy of making grants to the states had to be adopted, and the Federal Emergency Relief Administration was set up in Washington.

The main duty of the FERA was to maintain a clearing-house of information on relief matters and to allocate the federal moneys to the states. The actual administration of relief, however, was left with state and local administrators, who had full sway except for certain federally-prescribed safeguards against inefficiency, injustice, and dishonesty.[15] The federal government did prescribe minimum wages and maximum hours for the work-relief employees of states and cities, but in all other respects the programs were run entirely by local officials. City-sponsored work-relief projects under the FERA required only state, and not federal, approval, and local officials had complete control over the hiring of workers and the supervision of the undertakings.

Federal financial assistance, made necessary by the presence of large groups of employables on the relief rolls, cannot accurately be called federal usurpation of a state and local function, since the problem was a new one which had never been handled locally. Furthermore, the mere fact that the federal government laid down certain rules and regulations to make sure that federal relief moneys were properly spent within the states does not constitute a new or disturbing departure, for federal supervision has accompanied grants-in-aid to the states ever since the subvention system was started by the Morrill Act of 1862. Still another indication that the federal government had no intention of taking over the relief functions traditionally belonging to states and localities is the fact

[15] In only six states—Oklahoma, North Dakota, Massachusetts (in part), Ohio, Louisiana, and Georgia—was the Federal Emergency Relief Administrator obliged to exercise his powers under the act of 1933 to supplant state relief administrators with federal appointees.

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that the FERA confined itself to a purely "residual" responsibility. In other words, the federal government contributed only the needful remainder after states, counties, and cities had contributed to the extent of their ability. The institution of the Works Progress Administration in 1935[16] pointed still more definitely to the conclusion that the federal government did not propose to absorb any relief functions formerly in the hands of states and localities. The act of 1935 distinguished the two groups of persons on relief rolls as employables and unemployables. Because local revenues had taken an upturn by 1935, all the unemployables, the traditional burden of states and localities, were returned to the care of those local units.[17] The new task of caring for the employables, however, was to remain the responsibility of the federal government, and the federal work program of the WPA was established for them.

Public Works. The federal grants and loans made directly to cities for public works projects are, in the minds of some observers, an even clearer example than relief of a whittling-away of state powers and dignity. That phase of the public works program which made municipalities the direct beneficiaries of federal funds has admittedly placed cities under certain moral and legal obligations to the federal government. As early as 1932, the Emergency Relief and Construction Act contained a provision which gave to the Reconstruction Finance Corporation, a federal agency, mortgage liens upon the self-liquidating public works constructed by municipalities with RFC funds; and the non-federal public works projects constructed by cities on the loan and grant basis inaugurated in 1933[18] have brought about an even closer tie-up between cities and the federal government. Cities accepting PWA grants for municipal construction projects have had to agree to a federally-prescribed schedule of wages, hours, and conditions of employment on the projects, to allow federal inspection of the work, and to have federal officials review and audit all financial transactions connected with the projects. The amounts paid by cities for technical and engineering plans as well as for actual construction are subject to disallowance by the Public Works Administration if the costs are not fair and reasonable in federal eyes.

It must be remembered, however, that the new federal-municipal relationships brought into being by the public works program do not rep-

[16] By Executive Order No. 7034, dated May 6, 1935, issued under authority of Pub. Resol. 11, 74th Cong., April 8, 1935.

[17] To assist states and localities in bearing this financial load and to foster better standards of care for the unemployables, Congress passed the Social Security Act of 1935.

[18] NIRA, Title II, approved June 16, 1933; Emergency Relief Appropriation Act of 1935, Pub. Resol. 11, 74th Cong., April 8, 1935; Emergency Relief Appropriation Act of 1936, appearing as Title II of Pub. No. 739, 74th Cong., approved June 22, 1936.

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resent a forced extension of federal control over cities. Municipalities have entered freely into such relationships, and applied for and sponsored the projects which have been undertaken within their boundaries. As Justice Cardozo pointed out in expressing the views of the Court minority of four who supported the Municipal Debt Readjustment Act, "persuasive analogies tell us that consent will preserve a balance threatened with derangement."[19] The stipulations and restrictions in PWA contracts, therefore, did not constitute federal "control" over cities. Furthermore, federal lending agencies scrupulously observed local laws in extending financial assistance for the undertakings of the public works program. In cases where local debt limits or technical requirements stood in the way, the federal government made no grants or loans until after the passage of the requisite state enabling legislation or amendment of the state constitution or city charter.[20] Before the cities could receive their federal allotments for public works projects, they had to conform to any local requirements of special notice and publicity, bond elections, or approval of a certain percentage of the voters.

Even the public housing projects of the PWA Housing Division, which are financed and managed wholly by the federal government, were not constructed in any community except upon formal application by the governing officials or civic groups in the city concerned. Though title and management are vested in the federal government, cities and states are not thereby deprived of jurisdiction over the developments. An act passed in the last Congress gives official guarantee that acquisition of real property by the United States for slum-clearance or low-rent housing "shall not be held to deprive any state or political subdivision thereof of its civil and criminal jurisdiction over such property, or to impair the civil rights under the local law of the tenants or inhabitants on such property."[21] Nor does the federal government propose indefinitely to continue full financial responsibility for low-rent urban housing. The Wagner Housing Bill,[22] emphatically approved by Public Works Ad-

[19] Dissenting opinion in the case of C. L. Ashton, et al., petitioners, v. Cameron County Water Improvement District Number One, decided by the United States Supreme Court on May 25, 1936.

[20] Loans made to cities for rural power-lines by the Rural Electrification Administration, while not strictly a part of the public works program, illustrate many of the same principles. For example, the REA is not permitted to lend to cities which lack the right to provide electric service beyond their corporate boundaries, and the Rural Electrification Administrator is obliged to obtain the consent of the appropriate state authority before making any loan to a city for the construction, operation, or enlargement of a generating plant. (Pub. No. 605, approved May 20, 1936.)

[21] S. 3247, 74th Cong., passed June 19, 1936.

[22] Proposed "United States Housing Act of 1936," introduced in the Senate on Apr. 3, 1936, by Sen. Robert Wagner of New York, passed the Senate in revised form but failed to come to a final vote in the lower house before adjournment. By

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ministrator Ickes and due to come before Congress again in the next session, is based on the principle that the true rôle of the federal government in the field of public housing lies in giving financial and technical assistance to municipalities.

Finally, no true appraisal can be made of the effect of recent federal contacts upon local governments without a realization that the laws and executive orders which emanated from Washington did not mold state and local governments to a federal pattern. State and local relief administrations, for example, exercised wide discretionary powers in interpreting federal instructions on such points as the use of federal funds to supplement the earnings of full-time workers in private industry, or the removal of persons from relief rolls during a "labor shortage."[23] Other emergency agencies, such as the Public Works Administration and the Resettlement Administration, can provide many similar examples of local variations in applying regulations from Washington.

The conclusion may reasonably be drawn, therefore, that "liquidation" of states and consequent centralized control over municipalities have been neither attempted nor even incidentally brought about by recent congressional enactments. Nevertheless, it cannot be denied that the federal government has been assuming a new importance in the affairs of local government and that a subtle change in inter-governmental relations has taken place as a result of the new and direct federal-city contacts. In the opinion of the writer, this change need not be the prelude to a disintegration of the states, but may instead bring about the development of a more realistic and efficient federal system. The primary danger in having the cities look to Washington for financial aid in carrying on local functions is that municipal and state officials may thus be enabled to shelve indefinitely the problem of putting local tax structures in order. Such a policy might in the long run give the cities no real alternative to carrying on all major functions through federal grants-in-aid, with their accompanying restrictions and conditions.

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Conference Committees in the Nebraska Legislature. In his campaign for a unicameral legislature in Nebraska, Senator George W. Norris cited the necessity of conference committees as one of the chief evils in the bicameral system. To Senator Norris, the conference committee is often a "third house" of the legislature, where a small group of men,

title, it is an act "*to provide assistance* to states and political subdivisions thereof for the elimination of unsafe and unsanitary housing conditions, for the development of safe, decent, and sanitary dwellings for persons of low income . . . " etc.

[23] *Monthly Report* of the FERA, June 1–30, 1935, p. 11, footnote.

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working in secret and enjoying great parliamentary advantages, so modify bills in dispute between the two chambers that the will of the majority is defeated.

Except for a few variations, conference committees which have functioned in the Nebraska bicameral legislature are fairly typical of those in other states. Conferees in equal numbers (three from each house in nearly every instance) are appointed by the presiding officers of the house and senate. The committee deliberates in nominal secrecy, although there have been occasions of the greatest informality. It is not restricted to that portion of a bill in dispute between the houses, and it reports, not upon the concurrence of a majority of the conferees from each house, but when a majority of the joint membership can agree. In the legislative chambers, the conference report is debatable but cannot be amended. Since 1920, the state constitution has required that conference reports may be adopted only by yea and nay votes entered upon the journals.

In the regular sessions from 1921 to 1933—the period between the adoption of the constitutional provision regarding conferences and the successful campaign for a unicameral legislature—10.95 per cent of all measures passed by both houses were first subject to conference committee action. Moreover, 27.24 per cent of all bills amended by the second house and finally passed by the legislature were sent to conference. Although not all important measures went to conference, many of the most significant bills, including every biennial appropriation, were so referred. There was also a constant tendency to appoint a majority of the conference committees near the end of the session. While the legislative sessions averaged 113.4 calendar days, 69.14 per cent of all bills which went to conference were first sent within the last 20 days and 49.71 per cent within the last 10 days.

Service on conference committees has not been confined to only a few members; nor have a few leaders served on all of the committees. An average of 87 per cent of the membership of the senate has served on conference committees in each session, and 48.71 per cent of the membership of the house. There has been a marked tendency for one or more of those introducing a bill to serve on the committee of conference. Of the total number of committees appointed on senate bills, one or more introducing senators served on 86.97 per cent of them; and on house bills (exclusive of those introduced by standing committees) 71.21 per cent of the conference committees included one or more introducers. In both houses, it has been the policy to give the controlling voice in each group of conferees to those who voted for the prevailing action of the chamber; but in recent years there seems to have been a growing tendency to appoint one opposing member to each conference group. A majority of all conference groups from both houses included at least one member of the standing committee which had considered the bill. In the senate, the chairman of

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the standing committee was appointed on 33 per cent of conference groups, and in the house the chairman was appointed on 27.75 per cent. In regard to political affiliation, it has been usual, whenever the minority party has comprised any sizable portion of the membership, for each house to be represented by two conferees from the majority and one from the minority. Finally, the student of the Nebraska conference committees cannot overlook the fact that all too frequently conferees have been selected by the presiding officers of the two chambers for reasons of party or factional strategy.

Conference committee reports have usually been made with reasonable promptness. Of all reports, 57.13 per cent were made within two days, and reports delayed more than a week have been unusual.

In the case of well over half of the conference bills which ultimately passed, the committee made material changes in subject-matter, either in the original text or in the amendments. Among the five general types of conference reports, the percentage of bills which belonged to each classification was: (1) to make a material change, 63.35 per cent; (2) to adopt the amendments of the second house, 13.04 per cent; (3) to recommend that the second house recede from its amendments, 11.18 per cent; (4) to propose that part of the amendments be adopted and that the second chamber recede from part, 11.18 per cent; and (5) to suggest only technical or clarifying alterations, 1.24 per cent. Exactly 92 per cent of all conference bills were passed by the legislature. In the case of 74.29 per cent of all bills sent to conference, only one meeting of the conferees was required. For the remainder, from two to four meetings were necessary.

The conference committee, in some form, is a necessity in a bicameral legislature when the two chambers have coördinate powers or are of relatively equal importance. Potential misuse of power, might, however, be guarded against in various ways. (1) The appointment of conferees might be left less to the uncontrolled discretion of the presiding officers and some arrangement devised to give the conference committee certain elements of a standing committee. The congressional custom of appointing as conferees the ranking majority and minority members of the standing committee to which the bill had been referred is an illustration of this attempt to prevent capricious or ulterior selection of conferees. (2) The committee might well be restricted in its power to alter a bill beyond that portion in dispute between the houses. (3) While it is probably necessary that sessions of the committee be secret, a record of its deliberations and of the votes of its members in conference might well be made public. (4) Every conference report might to advantage be accompanied by written reasons for the recommendations made.

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Distinguishing Administrative Aspects of the Farm Credit Administration. The federal farm loan system is a government established, aided, and supervised organization, designed to render an economic service in the field of agricultural lending. Its main purpose is to create and keep open a continuous channel between the farmer and sources of surplus funds in large centers. It was founded nineteen years ago, and has been developed and amplified in order to pool the credit needs of individual farmers with good credit and good farms, and provide for them more nearly the same terms and rates extended to large industrial borrowers. These general rules may be said to govern the operations of its credit policy: (1) without attempting to make all agricultural loans, Farm Credit Administration endeavors to supplement the activities of other agencies, and to set a standard of costs of credit and the terms upon which such credit is extended to agriculture; (2) interest rates charged to farmers should bear a relation to the cost of money to the Farm Credit Administration in the investment market at the time the loan is made; (3) loans should be made with reference to the needs of agriculture and the biological cycle of production; and (4) loans should be made which are within the capacity of the farmer to pay, so that he may repay them out of farm income, minimize his indebtedness, and keep credit channels open for future needs.

The federal land banks are the largest and oldest of the institutions in the system. Founded in 1917, they had by 1936 become the largest single farm mortgage institution in the country, holding approximately $2,000,000,000 of farm mortgages, or about one-fourth of the total national farm mortgage debt. In many respects, although not altogether, they were used as a model on which the subsequent permanent institutions of the system were designed, and about which the constellation of new farm credit units has clustered. Started with capital furnished by the federal government, they were designed to become privately owned agencies, and by 1931 farmer ownership had been practically established. However, by the time when they came under the jurisdiction of the Farm Credit Administration in May, 1933, the long depression in agriculture had made necessary a reverse movement and government investment was again preponderant. At that critical time, they were selected as the vehicle through which to accomplish the great task of refinancing farm mortgages in order to stop the rising tide of farm foreclosures and to reduce the burden of farm debt. This emergency task necessitated additional government financial aid of various types. The objective of eventual farmer ownership remains, however, and with the decline in volume of emergency refinancing demands it is again possible to move in that direction.

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From the administrative point of view, the federal land banks should be of greater interest to students of government than the other agencies in the Farm Credit Administration, not only because they are the oldest, largest, and most experienced agencies in the system, but mainly because they are its most significant demonstration of how the federal government can establish and maintain an economic service, in a field not adequately served by private enterprise, without going into business directly. Consequently, more attention is devoted here to them than to the other agencies in the system.

Four principal administrative aspects distinguish the operation of the Farm Credit Administration: (1) the executive system in the central supervisory and regulatory establishment in Washington fixes responsibility and provides independence, speed, decisiveness, and leadership to a degree difficult to achieve in the operation of a bureau or the more usual board system; (2) decentralization of operating functions to regional organizations governed by boards, elected in part by borrowers, gives substantial district autonomy and democratic representation; (3) the corporate form employed for each regional operating unit—each unit being self-financing—develops an incentive for unit efficiency and provides substantial freedom from government restrictions and procedures; and (4) coöperative associations, owned and controlled by borrower-members, give the entire system local roots in the communities served.

The Central Establishment. By an executive order of March 27, 1933,[1] effective May 27, 1933, the powers and functions of various agencies dealing with agricultural credit were merged in the Farm Credit Administration (Figure 1). These included the functions of the Federal Farm Loan Board; the functions of the Federal Farm Board, except those relating to stabilization operations; the functions of the Reconstruction Finance Corporation pertaining to the Regional Agricultural Credit Corporations; and the functions of the crop production and seed loan offices of the U. S. Department of Agriculture. The two boards were abolished and jurisdiction and control were vested in the newly created office of governor.

Thus the governor was not only given control of the Washington supervisory staff, but also succeeded to the broad jurisdiction of the boards to supervise the general operations and loan policies of the field units. His most important function, as the head of a great national system, however, is not administrative, nor even policy determination in the ordinary, impersonal sense, but rather it is to provide leadership, to determine the direction, to set the tone for the whole organization under his control. The occupant of such an office must divine on what matters emphasis may be safely subordinated from time to time and what phase of the system

[1] Executive Order No. 6084.

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requires the attention and the whole force and energy of himself and staff at any specific time.

Although the board form was dispensed with, the governor is, in fact, assisted by four presidential officers known as commissioners, each at the head of a particular phase of credit activity. They are the Land Bank Commissioner, the Intermediate Credit Commissioner, the Production Credit Commissioner, and the Coöperative Bank Commissioner. The commissioners really serve two functions. They act as administrative

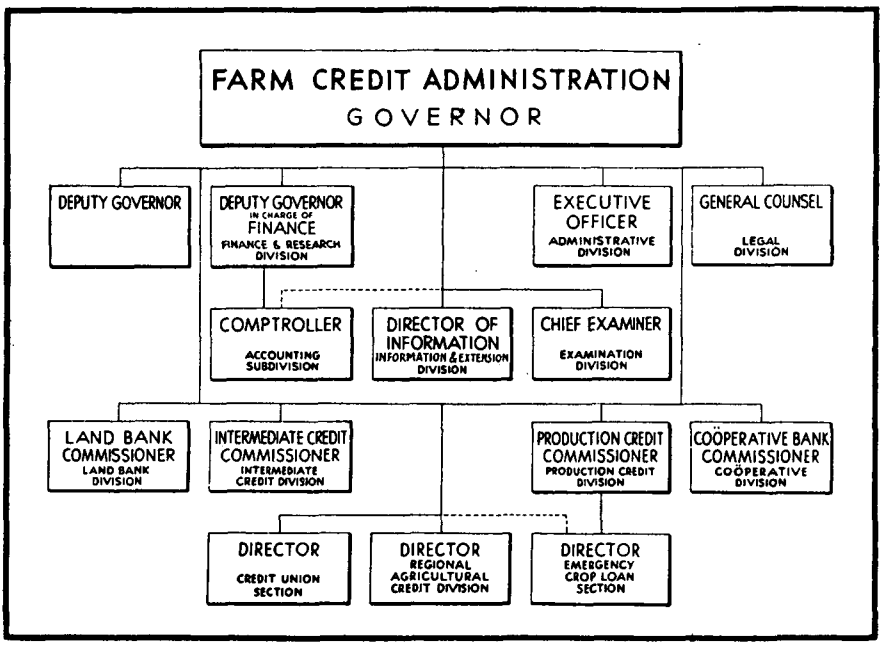

FIG. 1. The Washington organization is composed of ten divisions, each of which is assigned certain definite functions.

heads of their respective operating divisions and as advisers to the governor on matters of policy. The commissioners have primary responsibility for the work in their respective divisions, that is, the duty of regulating and supervising the work of their respective credit units in the field. Each commissioner is in close touch with operations and developments in the twelve banks of the type for which he is responsible. The organization of the Farm Credit Administration into divisions under commissioners tends to avoid the danger of over-coördination. It tends, moreover, to lay a strong base of well managed individual credit units without which a complete system of coördinated farm credit services cannot be soundly

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built. Each of the present commissioners has been appointed because of his intimate and successful experience in the actual operation of credit facilities in his own field, whether it be long-term, short-term, or coöperative credit.

Yet it should not be inferred that general problems of farm credit which transcend divisional lines are disregarded because of this specialization. Sitting with the governor as an advisory staff at regular conferences, the commissioners represent the interests of their respective institutions, but at the same time bring their broad practical experience to bear on general policies and on specific matters which arise in each other's fields. This provides the coördination needed on credit and operating policy in rendering a well rounded farm credit service to agriculture by institutions whose problems are intimately related. Thus two important benefits of board operations—representation of various interests and conference consultation—are obtained at the same time that the defects are avoided and the advantages of a single executive, unity of responsibility, authoritative action, and prompt decision are secured. Benefits of overlapping terms, as existing in boards and commissions, are sacrificed. Compensating for this loss, however, is the continuity obtained through the force of local associations and operating units, as well as by the permanent technical and administrative staff, and it is perhaps better that some flexibility be allowed in the top, policy-making positions.

For efficiency in providing certain common services and to eliminate duplication among operating divisions, the governor has established five service divisions. These are Finance and Research, Legal, Administrative, Examining, and Information and Extension. As heads of these services and members of his personal staff, he appoints two deputy governors, a general counsel, an executive officer, a chief examiner, a comptroller, and a director of information.[2]

Supervision over the regional institutions is exercised by the Washington staff by means of periodical standardized reports, such as accounting statements and reports of financial conditions of institutions; statistical reports on lending, collecting, and real estate operations; reports on administrative costs, personnel strength, employment turnover, etc.; and annual reports. Direct contact with the banks and corporations is made by the examiners of the central office staff who make semi-annual examinations of each bank, and by a group of specialists of various types who make field visits and conduct studies on organization and procedure, accounting and statistical method, personnel classification, and credit.

The Washington office also promotes leadership and educational and service activities by acting as a clearing house for the collection and dis-

[2] For further details regarding the functions of these divisions, refer to the *Third Annual Report of the Farm Credit Administration.*

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semination of information. By conferences of special groups, such as presidents of various banks and corporations, as well as of specialists, such as examiners, accountants, or personnel officers, many problems common to all districts are worked out. Expert assistance to individual operating units is furnished by the headquarters office in the fields of procedure, accounting, law, credit, agricultural economics, membership relations, and credit and cöoperative education.

The Washington office is responsible also for the review of certain types of specific transactions, such as approval of individual personnel actions, of land bank loans for collateral purposes, of certain types of loans in excess of $25,000, and of security issues. The importance of control over security issues is enhanced by the joint liability of the banks for payment of principal and interest in view of the fact that they are now issuing consolidated bonds and debentures. The allocation of government capital to the banks and the chartering of national farm loan associations and production credit associations are also functions of the Farm Credit Administration.

The organization in Washington which performs these supervisory functions is an independent federal establishment. In connection with the particular task which it has to perform, this independent status has certain advantages. It has a definite advantage over a bureau, as problems of farm credit are not subordinated to unrelated problems of a large regular government department. Its separation from other governmental activities helps to strengthen the feeling among borrowers and field units that they are identified with an independent system which is peculiarly their own. Thus its activities are brought more into the agricultural spotlight and farm organization leaders watch with keen interest the type of men selected for the positions of governor and credit commissioner and insist that they be, first of all, skilled in their particular fields.

A nice balance between the needs of investors and farmer borrowers, that is to say between creditors and debtors of the system, is assured by this independence. Farm credit functions require considerable contact with the Treasury Department and the Department of Agriculture. When the Farm Loan Board was in the Treasury Department, however, the inevitable influence on its policies led to over-emphasis in the matter of general fiscal conditions. If it were placed in the Department of Agriculture, the possible tendency might be to greater preoccupation with the agricultural side and minimization of the importance of problems connected with the sources of funds in investment markets.

It seems clear that the prevailing reason, at the time of the reorganization, for the change from the board system to the single executive system was a desire to concentrate authority and responsibility in one man and to eliminate the delays, indecisions, and compromises which appear to be

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inherent in the board structure. Henry Morgenthau, Jr., then chairman of the Federal Farm Board, made the following comments in regard to the matter of a single administrator in place of board control at a round table conference of the United States Chamber of Commerce, May 4, 1933: "In exercising the general supervisory and administrative functions of these various agencies, it has seemed to the President and his advisers that there is no more compelling reason why decision should be reached by a board of many members than for having similar boards of control in authority over the executive departments of the government. The board system is inevitably cumbersome; it delays decisions and divides instead of concentrating responsibility. It seems the more unnecessary because of the fact that in several of these activities, that is, those having a banking aspect, there are separate local boards of directors and loan committees to deal with applications and with policies."[3]

Some critics are of the opinion that the system concentrates too much power and control in the hands of one man and that it may be better suited for an emergency when the accent is on speed than for a long-time program requiring deliberation and protection from pressures. Experience has justified its adoption for the period of the emergency refinancing program and in order to mold the various federal farm credit agencies into a coördinated, smooth-running single system, and indicates numerous advantages for its continuance. Moreover, there is substantial ground to question whether full-time federal boards and commissions have been altogether successful in their operations. There is considerable tendency to appoint men to the well-paid positions of board members who are lacking in ability. They frequently share little of the responsibility and often impede, embarrass, and discourage an able chairman. Furthermore, there is a tendency in board operation to divide the work of an executive nature among the board members, which minimizes the importance of the executive staff and creates administrative confusion.

The compelling reasons for board structure in the case of agencies having quasi-judicial functions over privately established industry and trade do not apply with equal force to an organization such as this one supervising and operating a system devoted primarily to a service function which the government itself has created. If the governor and commissioners, for instance, were constituted into a board, the result would be loss of efficiency and increased costs. It would preclude, because of the necessity of attending board meetings, the possibility of frequent trips by the commissioners to operating units outside of Washington and constant contact with the banks and corporations, which has proved of great importance in the supervision of the farm credit system.[4]

[3] *Federal Farm Board, Press Service*, No. 3–70, May 4, 1933, pp. 8 and 9.

[4] For more complete discussion on this point, see *Hearing before a Subcommittee*

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Decentralization—Regional Organization. While the Farm Credit Administration was set up so that it would provide a central point for coördination and supervision of all federal farm credit facilities, it was realized that decentralization was essential in the actual lending, collecting, and other business operations. With this idea in mind, shortly after the passing of the original Federal Farm Loan Act of 1916, the United States was divided into twelve farm loan districts, a headquarters city was selected in each district, and twelve federal land banks were chartered and located accordingly (Figure 2). One important basis for the districting was diversification of risk. Other factors were size, population, homogeneity of culture and economic practice. The largest measure of regional autonomy was granted because of the variety of crops, agricultural and climatic conditions throughout the country, and the various systems of land tenure, title and mortgage laws in the forty-eight states, as well as the greater sense of responsibility locally for the success of loans than if they were made from Washington.[5]

The need for decentralization of various types of agricultural lending may be further illustrated by the experience of the Federal Farm Board. Under the Agricultural Marketing Act of 1929, it had been making loans to farmers' coöperative associations directly out of Washington. Former Governor Morgenthau observed after a short period in office that the applications for ninety per cent of the loans which came before him should never have come to Washington, but could have been handled better regionally. This change, he said, would save the representatives of the coöperatives the expense of coming to Washington, it would give the lending agency the benefit of local knowledge in passing on loans, and it would expedite consideration of loans. Mr. Morgenthau said: "It would be perfectly ridiculous to expect anybody sitting in Washington to be big enough or intelligent enough to know the needs of every locality."[6] Congress took cognizance of this experience when it set up twelve regional banks for coöperatives, at the same time creating a central bank in Washington to handle the ten per cent of the applications which are national in scope. It may not be too early to assert that the regional banks for coöperatives in their three years of operation have amply confirmed this statement.

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of the Committee on Banking and Currency, United States Senate, 74th Congress, 2nd Session, on S. 4003, "A Bill Providing for the Reorganization of the Farm Credit Administration," March 25, 1936, especially the statement of Governor Myers and accompanying exhibit, pp. 82ff. and 110ff.

[5] For a more complete account of the early history, see *First Annual Report of the Federal Farm Loan Board*, 1918, 65th Congress, 2d Session, H. Doc. 714; W. Stull Holt, *The Federal Farm Loan Bureau* (Baltimore, 1924).

[6] *Hearing before the Committee on Agriculture, House of Representatives*, 73d Cong., 1st Sess., on H.R. 5790, "Farm Credit Act of 1933," p. 12.

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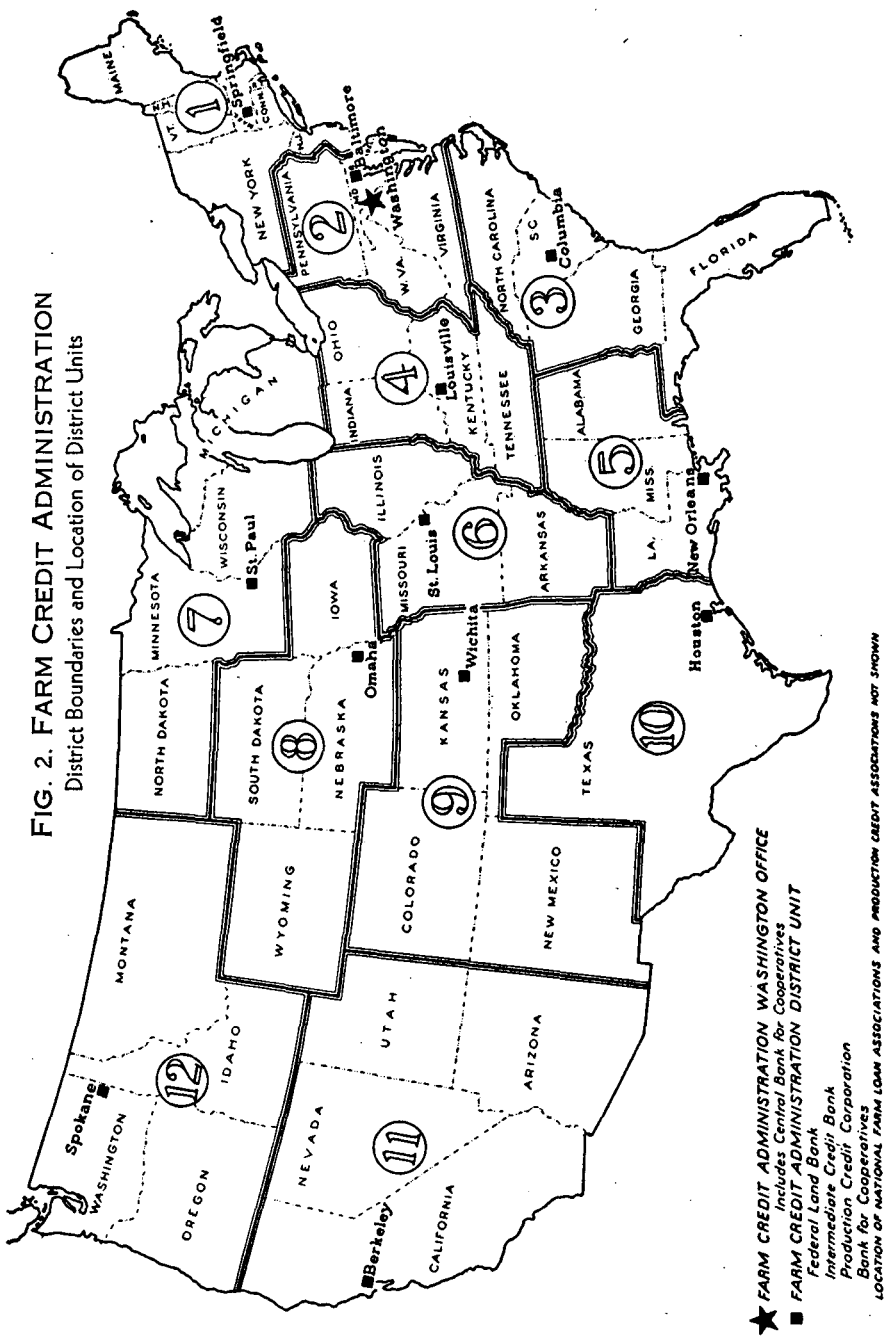

FIG. 2. FARM CREDIT ADMINISTRATION
District Boundaries and Location of District Units

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In the decentralization of credit operations, regional organizations governed by boards have been created (Figure 3). In each of the twelve districts there have been organized four corporations, a federal land bank, a federal intermediate credit bank, a production credit corporation, and a bank for coöperatives. The board of directors for each of these corporations is identical. Three of its seven members are elected by organizations of borrowers. The other four (one of whom must be a borrower)

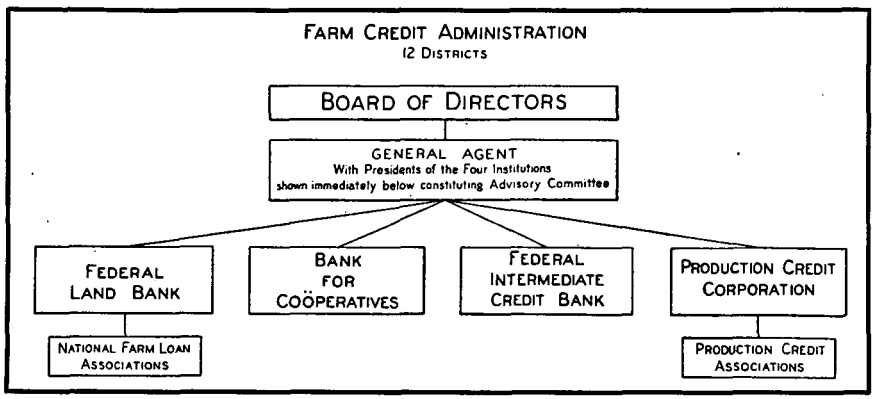

FIG. 3. Organization in each of the twelve districts.

are appointed by the governor of the Farm Credit Administration. The term of each director is three years. This board of directors serves as a policy-determining group for each of the corporations and also as a district council to coördinate the activities of all the corporations in the district. It elects or appoints the officers and employees of each corporation. These part-time directors spend two or three days each month attending bank meetings. By law, not more than one director may serve the federal land bank or the Farm Credit Administration as an officer or employee. "Except with the approval of the Land Bank Commissioner, no director (other than the director who may be an officer or employee) shall receive compensation or allowances for any services rendered any federal land bank in his capacity as director for more than thirty days in any one calendar year exclusive of the period for which compensation is paid for attendance at directors' meetings."[7] Under the policies of the Farm Credit Administration, paid officers of the banks and corporations do not serve as directors. The purpose of this policy is to improve administration and to draw a clear-cut distinction between policy-making and execution. Yet there seems to be little difficulty in attracting outstanding figures in

[7] 12 *U. S. Code*, Sec. 683.

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agriculture to serve on these boards. The value of the boards in standing for sound but sympathetic treatment for farmers and in reflecting the varied agricultural interests of their localities cannot be measured in terms of their limited fees for attending monthly meetings.

To aid in its function of coördinating the work of the four institutions, a general agent is appointed by the board of directors of each district on nomination of the governor. The general agent in a majority of cases is the president of one of the corporations, serving without additional compensation. The general agent's staff includes the general counsel, comptroller, personnel officer, information agent, purchasing agent, and statistician. These act in a dual capacity of coördinating the work of the four district institutions and as joint staff employees serving the four operating units in each district, and thereby reduce expense and prevent duplication of effort.

The Corporate Form of Operating Unit. Each of the four corporations in the district is a self-sustaining business organization. Each one is subject to the supervision of the Farm Credit Administration. Since these institutions are independent corporate entities, they were, of course, not made subject to such typically governmental controls as are provided by the General Accounting Office, the Civil Service Commission, and the Bureau of the Budget. Their corporate form and powers are set by statute. As they are organized, the federal land banks, for instance, have powers typical of private corporations, which include the right to adopt a corporate seal, to have perpetual succession, to make contracts, to sue and be sued, to appoint and discharge officers and employees, to make bylaws, and "all such incidental powers . . . necessary to carry on the business . . . ."[8] In addition, the law enumerates certain other general powers of federal land banks pertaining to their credit operations, among which are the power to issue and sell bonds, acquire and dispose of property, deposit securities and funds with reserve banks, and borrow money. In all, sixteen such powers are stated in the act as amended.[9]

Certain specific limitations on the powers of the federal land banks are provided by law, especially in regard to the security accepted and the issuance of bonds.[10] For instance, no federal land bank has the power to accept deposits of current funds payable upon demand, except from its stockholders; to transact any banking or other business not expressly authorized; to accept any mortgages on real estate except first mortgages; or to demand any commission or charge not specifically authorized. It is also of interest that the law provided for designation of the land banks as depositories of public money and financial agents of the government.[11] The banks have on several occasions been used by the Treasury for both purposes.

[8] 12 *U. S. Code*, Sec. 676. [9] Sec. 781. [10] Sec. 791. [11] Sec. 991.

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In short, each of the four operating units in each of the twelve districts is a separate and distinct corporation, operating its own phase of the farm credit business and rendering a distinctive service. Duplication is avoided; team work is encouraged by an identical board of directors and a coördination staff of joint officers. Each unit can employ personnel by whatever means it wishes, and at salaries which vary according to economic conditions in the regions; salaries, like other expenses, are paid out of corporate income, not from funds appropriated by Congress. However, every effort has been made to introduce modern personnel methods into the banks, to promote from the ranks, and to see that merit is recognized in promotions and appointments. A tradition of continuity in office of able executives has developed throughout changing administrations. On this point, Governor Myers of the Farm Credit Administration has said: "A policy which I think is most essential in the building of a permanent credit system is that of providing continuity of management in the district banks and credit units. The policy which we are attempting to follow is that of making continuing employment subject solely to merit, to the ability of men to make good. This policy must be maintained if these institutions are to continue to enjoy the confidence of investors. It is imperative that efficient management be retained and that continuing management be employed if we are to maintain an effective contact with the investment market."[12]

Each corporation may fit its accounting system to the specific problem involved, not to general governmental rules and regulations. Its operating funds are derived from its own activities, not from congressional appropriations, and it therefore knows approximately what its budget will be without reference to committees of Congress or the competition of other governmental departments in compiling the general budget. Its receipts go to build up a reserve, or into dividends to borrower members, not into the general fund of the Treasury. The deficits of a governmental department are not as obvious as are business losses. The corporation can better judge the efficiency of its operating procedure with these conditions plainly before it. It gives free play to salesmanship, essential to the conduct of a business, though this is obviously not required for an ordinary governmental department administering a law. It obtains its capital from the private money markets through operations not directly connected with the Treasury, and thus does not in normal times depend upon the Treasury for its needs in this respect.

This is not to say, however, that these federal corporations do or should enjoy the same free will as private corporations. As Stuart Chase observes, "If privately owned, the central office staff policy reflected

[12] From an address by W. I. Myers, governor of the Farm Credit Administration, at the annual meeting of the Land Grant College Assoc., Washington, D. C., 1935.

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down the line to the trenches is one thing; if publicly owned, it is likely to be another. Administratively, there is little to choose—the corporate form is rapidly becoming identical."[13]

The important difference between this form of public activity and private enterprise is that the public corporation is a special form of legal organization, responsible to the public, and must provide continuous credit service, particularly in difficult times when private institutions fail to provide it, and serve all those who can be soundly served. It cannot arbitrarily withhold service from certain groups and areas. It must render service at the lowest possible cost to borrowers, be able to defend its actions not only on loan policy but on matters of internal operation and procedure, and conduct its work with efficiency and high professional standards.

The corporations operate under certain restrictions. For example, the federal land banks are limited to loans up to fifty per cent of the normal value of the land plus twenty per cent of the value of the improvements. They are also limited in their participation in consolidated bond issues by rules and regulations which the governor may impose. The governor may also prescribe certain accounting methods and forms. But these limits are no more in general than are imposed upon public utility corporations by some state regulating agencies. They leave the principal lending and operating decisions in the hands of the corporation officials and district boards of directors.

The Federal Farm Loan Act specifically provides for certain exemptions from taxation as follows: "Every federal land bank and every national farm loan association, including the capital and reserve or surplus therein and the income derived therefrom, shall be exempt from federal, state, municipal, and local taxation, except taxes upon real estate held, purchased, or taken by said bank or association under the provisions of Sections 761 and 781 of this chapter. First mortgages executed to federal land banks, or to joint-stock land banks, and farm loan bonds issued under the provisions of this chapter, shall be deemed and held to be instrumentalities of the government of the United States, and as such they and the income derived therefrom shall be exempt from federal, state, municipal, and local taxation."[14]

It is obvious that these corporations, to which the U. S. Treasury had subscribed capital stock, had to be exempted from state taxation which might have been used in some cases to hamper or destroy their effectiveness. The need for tax exemption on their securities is a practical one. The bonds compete with tax exempt federal, municipal, and state issues, and in the face of that competition could not have been sold at a rate

[13] "How Can the State Do Business?", *Current History*, May, 1935, p. 132.
[14] 12 *U. S. Code*, sec. 931.

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which would have made possible as low a rate of interest on mortgages to farmers without this privilege. It is doubtful whether agriculture would continue to insist upon this privilege for land bank securities if competing issues, such as federal, municipal, and state securities, were placed on a taxable basis.

However, the problem which has arisen in connection with the taxation of real estate owned by certain federal lending agencies created since 1933, particularly those engaged in housing, never arose in land bank operation. It was definitely stated in the law that the exemption from taxation should not apply to real estate obtained through foreclosure. This has been an obvious advantage to the land banks by avoiding much conflict and controversy arising out of the problem of the use, rental, and sale of bank-owned property. Since the land banks, and the other corporations, are presumably self-supporting institutions, there is no reason why they should not be able to bear the burden of local taxes on real estate and, since they are coöperative institutions, they would be working at cross purposes if they withdrew the property from the tax-rolls by foreclosure and thus increased the taxes on other borrowers in the same community.

While the federal land banks are free from federal restrictions ordinarily associated with government departments, these institutions are not given the special privileges generally identified with operations of federal bureaus, such as the franking privilege, the use of government-owned buildings rent free, tax exemption on real estate owned, or the right to purchase supplies and materials at special government rates. Government-owned enterprises sometimes seek to enjoy simultaneously the freedom of private enterprise and all the privileges of public operation. There is a serious question whether these two policies are compatible and logical, or fair either to the public interest or to private competing undertakings.

At one time, the federal land banks were owned almost entirely by borrower associations, as the federal investment in their stock had been practically repaid. The administrative cost of the central Washington organization (then the Federal Farm Loan Board) was assessed against the banks so that the federal government did not have to appropriate even this item. The system was self-supporting. Because of ten years of agricultural deflation, it became necessary during the emergency to increase the government investment in the stock of the banks and to pay the cost of central supervision from government funds, with the exception of examination expenses, which have continued to be assessed against the institutions. It is a definite objective of the system to work toward increased farmer ownership of the institutions and gradual liquidation of federal subvention and appropriations.

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Local Coöperative Associations. Looking back to 1916, when the land bank system was established, there was a conflict as to policy in the matter of rural credits. Certain students of the problem whose view was expressed in the party platforms of 1912 and 1916 were in favor of cooperative facilities in which the farmer borrowers themselves would participate in management through loan associations. On the other side were the private lending institutions, which favored continuation of the bank control system of rural credits. The Farm Loan Act of 1916 represented, in a sense, a compromise between these theories. It permitted the establishment of federal land banks on a coöperative basis and of joint-stock land banks on a commercial basis. In the years that followed, booms in land values and the subsequent severe depression in agriculture caused the joint-stock land banks to experience difficulties, and they are now required by law to be liquidated.

Thus, the base of the structure of the Farm Credit Administration rests on associations of farmer borrowers. Its banks and corporations operate normally through national farm loan associations, production credit associations, and coöperative marketing or purchasing associations. Each of these three types of associations elects one of the seven members of the board of directors of the Farm Credit Administration of each district.

For illustrative purposes, the organization of the national farm loan associations may be described. They have two functions. They initiate and endorse federal land bank loans and collect matured installments on these loans. In addition, the federal land banks enlist the coöperation of the secretary-treasurer of the association for the management and sale of farms owned by the bank within the association's territory. Since each association is contingently liable through its endorsement for the loans of its members and is in close contact with such members, the associations generally are utilized for the collection of matured loan installments not paid promptly.

In at least one district, associations have already developed such strength and independence that they are regarded as "little land banks," with the federal land bank acting somewhat in the nature of a discounting and supervisory institution. Ultimately, it is hoped, associations in all districts will be so regarded. But it is realized that increased duties and responsibilities may be assumed successfully by the associations only as a result of the initiative of their members and directors. They may be stimulated by education, example, and instruction, but cannot be expected to function as genuine coöperative enterprises if powers or obligations are thrust upon them from above. Governor Myers has repeatedly stressed this belief. Recently he said: "Coöperative credit, like any other coöperative activity, should not be organized from the top down, but

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rather should have its incentive and its main operations in the community which it serves. For this reason, the national farm loan associations are being strengthened and in some instances combined with other associations so as to form economic units and provide a sufficient volume of business to pay for efficient management. They must be substantial business organizations which have an opportunity to build along business lines and to accrue reserves to take care of the kind of losses which will occur eventually even in the best managed business."[15]

There are at the present time approximately five thousand such associations incorporated under the Farm Loan Act. Their boards of directors and officers are elected by their own farmer members, who own all of their stock. Each association has a minimum authorized capital stock of $10,000, which may be increased by resolution of its board of directors and on approval of the land bank and the governor of the Farm Credit Administration. The five or more directors of the association are elected at the annual meeting by the members, and must be residents of the territory served and stockholders of the association. Usually no compensation is paid the directors, other than expenses.

The work of secretary-treasurers varies from district to district, especially in respect to the services performed for the land banks. Their compensation also varies in both amount and form. For many of the functions which they perform they have been paid on a fee or commission basis, but there is a tendency to secure full-time salaried men. It will readily be seen that a great deal depends upon the competence of secretary-treasurers for the efficient operation of the association. In some districts, where secretary-treasurers are well chosen and well trained, they constitute the most important factor in the smooth functioning of the system.

Each national farm loan association is subject to the supervision of the Farm Credit Administration.[16] Changes in the territory and in the authorized capital stock of the association must be approved before they become effective. Although the officers of the association are not subject to approval of the federal land bank or Farm Credit Administration, compensation paid them must be so approved. It is a policy of the Farm Credit Administration to examine all associations as required by law, at least once each year. If unsatisfactory conditions are found, the examiners are expected to bring them to the attention of the directors and officers in order that they may be corrected.

The organization by farmers of local associations to secure credit is the real coöperative phase of the system. Borrowers own all of the stock in

[15] Press Release, Farm Credit Administration, Washington, D. C., October 7, 1935.

[16] 12 *U. S. Code*, Secs. 711–761, 951.

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the associations. The associations, in turn, own stock in the federal land banks. At one time, nearly all of the bank stock was owned by borrowers; now more than half is so held, and it is expected that the government's stock will be completely retired eventually. Thus the farmer occupies a dual position of both owner and borrower. This is why the local associations are such an important part of the system. Since they form the foundation of the structure, the whole farm credit system can progress only as these associations are strengthened. The Farm Credit Administration has been working toward a program of better coördination of the functions of the local farm credit agencies by avoiding duplication of associations and offices and encouraging the local national farm loan associations and production credit associations to establish joint offices. A farmer could then secure all his credit needs from a single office, and there would be no duplication of work or records. However, this is a long-time program, and it may be a good while before a consolidation of all local credit agencies of the Farm Credit Administration will take place.

It is on the theory that these local coöperative associations of farmer debtors will protect farmer interests at the same time that they insure the safety of the loans that the system is built. It is believed that only on this principle can a system of long-term, amortized loans at low interest successfully continue to attract money from private investors, even with good supervision and safeguards.

In the preceding sections, the administrative structure of the permanent institutions of the Farm Credit Administration has been described. Its work in connection with credit unions has not been dealt with because the functions of that section are new; they are not confined to agricultural credit, nor are the administrative aspects of the organization as a whole as well illustrated in that connection as in others. The Farm Credit Administration also has supervision over some agencies which do not have permanent functions. These are the joint stock land banks, the regional agricultural credit corporations, and the Agricultural Marketing Act Revolving Fund, all of which are in liquidation, and the emergency crop and feed loan offices. In the latter, federal appropriated funds are provided by Congress for the making and administration of small loans too risky and expensive to be made on a coöperative business basis. The functions of the Land Bank Commissioner in loaning government funds to supplement loans made by federal land banks for farm mortgage refinancing are also of an emergency character. The emergency functions call for a slightly different method of administration. However, even the four permanent institutions do not have identical structures. The federal land banks are privately owned, although the government supplied the initial capital which was at one time practically retired but was further

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supplemented during the emergency period. The capital stock of the federal intermediate credit banks and the production credit corporations is entirely government-owned. The banks for coöperatives have been supplied with initial capital by the government. Borrowers from the production credit associations, however, subscribe to their capital as do borrowers of the banks for coöperatives. The capital stock subscribed by the government is in all cases non-voting. The funds used for lending by the federal land banks are secured by the sale of bonds in the investment market. The production credit associations secure their funds by discounting with the federal intermediate credit banks. The federal intermediate credit banks, in turn, secure funds by the sale of short-term collateral debentures to private investors. The banks for coöperatives also discount with the federal intermediate credit banks and with the Central Bank.

In conclusion, it is desirable not to leave the impression that the system has been uniformly successful in all of its phases. At the same time, it is worth noting that until 1932, in the face of increasingly serious agricultural depression over a course of twelve years, the federal farm loan system stood up better than banks and private institutions rendering similar functions. In order to enable it to undertake the great emergency task of refinancing almost 20 per cent of the farm mortgage debt of the United States, new capital and funds had to be put into the system by the government. It is important to avoid the danger of drawing the wrong conclusion regarding the administrative structure, because the period during which the Farm Credit Administration has been operating has been one of economic strain and of great emergency and expansion of operation. It is the opinion of the men who have studied the system and watched its operations that the distinguishing administrative aspects described in this article require developing and strengthening; that the policies of specialized and independent direction and of decentralization, and the coöperative basis, may be the keystones of a successful and enduring system of farm credit, and that the failures have been most marked where these elements have been disregarded. As a demonstration of how the government can offer an economic service on a coöperative basis without going into business itself, these principles of administration should assume great importance and significance.[17]

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Commissions of Inquiry in Germany. Inquiries are ventures into the unknown. As instrumentalities of government, officially organized investigations are a relatively recent addition to the mechanism of politics. Leaving aside regular agencies of criminal procedure such as the grand jury,[1] one may say that the emergence of investigating committees is closely connected with the growth of representative government. Parliamentary inquiries have come to be regarded as essential implements of legislative control over the executive branch. The present brief survey of German experience undertakes to show the potentialities and limitations of a different type of officially organized investigation: the executive inquiry.

"Mass democracy" based on equal suffrage takes for its point of departure the assumption that the electorate is able to dispose of controversial issues in the light of a rational appraisal of relevant data. Such an assumption, again, presupposes not only judgment, but also adequate information. Neighborhood-minded agricultural society remained unaware of the problems involved; the fundamental conformity and publicity of individual interests which signifies rural life facilitated and simplified "the people's choice." Modern industrial capitalism, marked by a wide diversity and deliberate anonymity of individual interests, confronts the organs of government with the dilemma of reconciling the disintegrating effects of economic *laissez faire,* old or new, with the contractive phenomenon of social interdependence. The perplexity of politics in the era of the "service state"[2] leaves the voter, although theoretically master of the new Leviathan, in need of guidance. As the center of gravity in the dynamics of political adjustment is shifting from the polls to the "inner ring" of party leadership, so elections tend to assume the character of plebiscites on issues framed in final form by competing political organizations.

One-party government in Europe relieves the electorate of its increasing responsibilities by the simple device of state-monopolized propaganda.[3] Democracy, on the other hand, consciously refrains from minimizing the voter's burden, supplying points of orientation only in the free contest of propagandistic forces. Commissions of inquiry thus may fulfil a vitally important task by crystallizing public opinion in the light of

[1] Cf. W. F. Willoughby, *Principles of Judicial Administration* (Washington, 1929), pp. 174ff.

[2] Leonard D. White, *Trends in Public Administration* (New York and London, 1933), p. 341.

[3] Cf. the papers by Fritz Morstein Marx, Arnold J. Zurcher, Bertram W. Maxwell, and Oscar Jászi in Harwood L. Childs (ed.), *Propaganda and Dictatorship* (Princeton, 1936); pp. 11ff., 35ff., 61ff., and 83ff.

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facts. Controversy, or at least indecision, characterizes the general setting from which most officially organized investigations originate. Modern German history does not lack such periods of controversy and indecision. At first glance, it may, therefore, seem surprising that commissions of inquiry, in comparison with British practices, have never gained institutional prominence in Germany. The explanation lies in the strong bureaucratic tradition of the country.[4] Two centuries of civil service domination in the executive branch have predetermined the mechanics of contemporary German government. Even under the Weimar constitution, legislative initiative rested *de facto* with the well-trained permanent staffs in the central departments. As the administrative machinery transmitted instructions from the top, so it communicated, in the constant flow of reports from the field agencies, detailed information accumulating at the bottom. In this way the executive branch could effectively gauge public sentiment, assemble the material necessary for the elaboration of long-term solutions, and adjust the process of enforcement to the needs of changing conditions.

In normal times, then, the professional administrator readily assumed the burden of fact-finding and social prognostication as the prerequisites to both the formulation of policies and the smooth transformation of programs into action. But with the decline of market-place economy and the advance of large-scale machine production the axioms of eighteenth-century mercantilism sank into the dust. A new world was in the making; this new world was class-conscious and conflict-conscious at the same time. Time-honored administrative routines were thrown out of gear. Unless new approaches were worked out, the wheels of government would soon stop. It was during this period of uncertainty that commissions of inquiry temporarily became the vogue in Germany. The bureaucracy sensed the triple dilemma of an unexplored future, obsolescent managerial techniques, and warring economic interest-groups. In its quest for stewardship, it turned toward the idea of independent *ad hoc* agencies which would take over the onus of trail-blazing, enlist private professional experience, and at the same time reflect in their findings the evolving reallocation of economic power. From the very beginning, German commissions of inquiry were called into being only under the impact of emergencies.[5] Practically all of these ventures emanated from an "atmosphere of obscure agitation,"[6] unrest, and suspense.

[4] "Germany has had an extremely long and continuous history of interest in administrative efficiency. The interest is an illustration of her political character, and her psychology in politics could be written by deduction from this as a major premiss." Herman Finer, *The Theory and Practice of Modern Government* (London, 1932), Vol. 2, p. 1280. Cf. Fritz Morstein Marx, "Civil Service in Germany," in *Civil Service Abroad* (New York and London, 1935), pp. 161ff.

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Attention was drawn to English experiences and, in addition, to Belgian, Swiss, and French precedents. Two investigations of industrial conditions, conducted by the Paris Chamber of Commerce in 1848 and 1860, were considered especially exemplary.[7] Prussia and other German states soon experimented with the new device. After the foundation of the Second *Reich* in 1871, commissions of inquiry were used as buffers between the national government and the states, between industry and labor, and between other conflicting group interests. The first problem to receive consideration was that of the railway rate structure. At the suggestion of business leaders, and in accordance with a resolution of the Federal Council (*Bundesrat*), Chancellor Bismarck appointed in 1872 a so-called Mixed Commission, composed of five representatives of agriculture, five representatives of commerce and industry, and five government delegates. Although the commission held only a few conferences, its report so convincingly rejected the idea of differential railway rates that the Federal Council deemed the case for differentiation definitely closed.

Three years later, the broader aspects of railway rate policy were submitted to another commission of inquiry, organized in the same way but limited to nine members. This time, greater emphasis was placed on formal hearings; no less than 46 witnesses, spokesmen for the largest economic interests, testified before the commission. Even more important was the fact that the hearings were stenographically recorded and later printed as minutes of evidence. While the report of the commission, published December 13, 1875, failed to offer any concrete proposals, the minutes have retained their value as a realistic presentation of a controversial subject.[8] Unfortunately, the same procedure was not followed in two further inquiries called forth almost simultaneously in order to bring together reliable data on labor conditions.[9] The "protocols" of these investigations are so condensed that their significance is reduced to the level of platitude and formality. Since the findings of the inquiries are based on the "protocols," they lack not only the touch of life, but also directness and persuasiveness.[10] Defective methods thwarted the purpose of the labor investigations.

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[5] Cf. Friedrich Zahn in *Handwörterbuch der Staatswissenschaften*, 4th ed., *Ergänzungsband* (Jena, 1929), p. 1085.

[6] Eduard Rosenbaum, "Zur Methode von Enqueten," *Wirtschaftsdienst*, Vol. 11, p. 949 (1926).

[7] Cf. Ernst Engel, "Die Schilderungsobjekte der Gewerbestatistik," *Zeitschrift des Königlich-Preussischen Statistischen Bureaus*, Vol. 11, pp. 396ff. (1871).

[8] For further references on the commissions of 1872 and 1875, see Rosenbaum, *loc. cit.*, p. 950.

[9] *Bundesrat* resolutions of January 31, 1874, and February 19, 1875.

[10] *Ergebnisse der über die Frauen- und Kinderarbeit in den Fabriken auf Beschluss*

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The decade following the war of 1870–71 was distinguished by industrial over-expansion in several branches of production, unstable markets for agricultural commodities, and the growing pains of a new national economy accentuated by temporary depressions. For some time, the idea of a comprehensive inquiry into the general conditions of industry and agriculture was advocated, particularly in those quarters which identified themselves with protectionism. While this proposal was shelved at the request of the government in the Reichstag debate of 1877, the pressure behind it was instrumental in bringing about the iron and textile investigations. It was typical again that of the six members of the commission of inquiry on the German iron industry, four were civil servants, while only two were drafted from the Reichstag, one acting as the standard-bearer of protective tendencies, the other as the mouthpiece of free-trade sentiment. Although the inquiry produced voluminous printed evidence, its weight was lessened through the fact that most witnesses obviously failed to do more than echo the preconceived point of view of their respective trade associations.[11] The textile inquiry fared better. Of its nine members, only four were professional administrators; one was a merchant, while the remaining seats were reserved for factory owners selected from different manufacturing strongholds. The commission made use of a carefully prepared questionnaire and, in addition, grouped the witnesses so as to obtain a plastic picture of regional conditions. Its report and the printed stenographic records of the hearings, supplemented by five leaflets containing statistical data, may be rated as a commendable effort to disperse the artificial fog which economic *sacro egoismo* emits in the defense of vested interests.[12] It must be said in justice to the civil service element in the commission membership that their meticulous impartiality entitled them to a large share of credit for this accomplishment.

The iron and textile inquiries derived their authority, true to tradition, from resolutions of the Federal Council passed June 25 and July 1, 1878, respectively. The tobacco investigation of the same year, originating in Bismarck's desire to create a tobacco monopoly, was for the first time organized by legislation.[13] Nevertheless it cannot be classified as a parliamentary inquiry. While the Prussian constitution of January 31, 1850, had empowered both chambers of the diet (*Landtag*) to appoint commissions "for the investigation of facts,"[14] no such provision was incor-

des Bundesrats angestellten Erhebungen (Berlin, 1877); *Ergebnisse der über die Verhältnisse der Lehrlinge, Gesellen und Fabrikarbeiter auf Beschluss des Bundesrats angestellten Erhebungen* (Berlin, 1877).

[11] For references, see Rosenbaum, *loc. cit.*, p. 951.

[12] The report was published February 26, 1879, as *Drucksache des Bundesrats*, No. 39 (Session of 1878–79).

[13] Act of June 26, 1878 (*Reichsgesetzblatt*, p. 129).

[14] Article 82 of the Prussian constitution.

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porated into the *Reich* constitution of April 16, 1871, although the *Reichstag*, elected by the people on the basis of equal suffrage,[15] compared favorably with the Prussian diet as a truly representative assembly. The tobacco inquiry was conducted by a commission composed of two national and five state civil servants, two tobacco merchants, one tobacco manufacturer, and one tobacco farmer. In order to cover the ground as thoroughly as possible, the commission set up 24 regional committees throughout the country, each of which reported sectional conditions independently. These individual reports were later included in their full text in the five volumes of findings laid before the Federal Council in December, 1878.[16] The deconcentration of approach undoubtedly contributed a great deal to the effectiveness of the investigation, which eventuated in a recommendation to drop the plan of a tobacco monopoly. In spite of the Chancellor's personal views on the matter, the commission succeeded in demonstrating the necessity of reconsideration, thus initiating a shift of executive policy.

The inquiries of 1878–79 paved the road for a reorientation of German tariff legislation. With the new tariff of 1879, the waves of economic argument quieted down for a while. But the cleavage between opposing group interests had not been bridged. Four years afterwards, trouble began to brew in the beet sugar industry. In June, 1883, an investigating commission of twelve members was appointed. Five were high officials of the national and state finance administration representing the Reich, Prussia, Württemberg, Baden, and Saxony-Weimar, respectively. The remaining members were experts for the sugar manufacturers and the beet farmers. The commission summoned 55 witnesses and reported as early as March, 1884.[17] The stenographic records of its hearings fill two volumes, while two other volumes contain various memoranda and supplementary material. On the whole, this inquiry, too, produced a lucid and penetrating analysis of a situation which foreshadowed the crisis of 1890. The subsequent low ebb of business and the as yet unbalanced state of Germany's national economy in general soon resulted in another investigation of labor conditions and a widely heralded inquiry into stock and commodity exchange practices. The first-mentioned task fell to a semi-governmental agency, organized in April, 1892, under the somewhat colorless label of a commission for labor statistics[18] and presided over by a ranking administrative officer of the national government. Six members

[15] Article 20 of the *Reich* constitution.

[16] The report was published December 22, 1878, as *Drucksache des Bundesrats*, No. 144 (Session of 1878–79).

[17] The report was published March 21, 1884, as *Drucksache des Bundesrats*, No. 41 (Session of 1883–84).

[18] *Kanzler-Regulative* of April 1, 1892, and January 29, 1894 (*Zentralblatt für das Deutsche Reich*, 1892, p. 166, and 1894, p. 19).

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were picked by the Federal Council, seven by the *Reichstag*, while technical experience was supplied in the person of a civil servant from the National Statistical Bureau. The wheels of commission activity turned slowly. From June 23, 1892, to March 13, 1902, no more than 22 hearings were held, each lasting a few days. The output of the inquiry was anything but impressive.[19] In fact, in 1902 the commission was overcome by the fate it deserved when it was absorbed as a permanent advisory council on labor statistics by the National Statistical Bureau.[20] This is perhaps the most striking example of an executive inquiry returning into the lap of the executive branch.

Of more lasting interest is the stock and commodity exchange investigation, called into being by the Chancellor on February 6, 1892. Its personnel amounted to the then record figure of 28, namely, the president of the *Reichsbank*, who assumed the function of chairman, seven civil servants, two university professors, and 18 representatives of business and agriculture, of whom six belonged to the *Reichstag*.[21] The commission held not less than 93 conferences, of which 56 were conducted as hearings in the technical sense. Testimony was given by 108 witnesses; eight of these appeared as academic experts known for their research in the field, and five on behalf of the instrumentalities of commercial news-reporting, while the remaining number aired the views of different economic groups. In spite of the breadth of attack, however, the operations of the commission never extended beyond a quasi-parliamentary exchange of opinions. Repeatedly, members of the commission indulged in partisan orations—irregularities which not only adversely affected the desirable precision of questions and answers, but also afforded the witnesses a unique opportunity to dodge whenever that appeared expedient.[22] The elaborate publications of the commission thus do not compensate for the conspicuous lack of discrimination, conciseness, and sagacity. While the discouraging experience of the exchange inquiry clearly pointed to the need for procedural direction and discipline, the cartel investigation, initiated ten years later (1903–1906), reached a new high in disorganization. This time, even the simple framework of the commission form was missing; instead, the inquiry was conducted by a frequently changing body of governmental officials who felt impelled to invite expressly "free" comments and were soon submerged by the ensuing deluge of subjectivism,

[19] *Drucksachen der Kommission für Arbeiterstatistik*, 22 leaflets (Berlin, 1893–1902).

[20] *Zentralblatt für das Deutsche Reich* (1902), p. 100.

[21] One of the civil servants was also a member of the *Reichstag*.

[22] Cf. Max Weber, "Die Ergebnisse der deutschen Börsenenquete," *Zeitschrift für das Gesamte Handelsrecht*, Vol. 43, pp. 87ff. (1895). See also Göppert, "Börsenrecht," *Handwörterbuch der Staatswissenschaften*, 4th ed., Vol. 2 (Jena, 1924), p. 1030.

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incoherence, and contradiction.[23] The last inquiry of the pre-war period was the banking investigation of 1908–09, assigned to a commission of 41 members under the chairmanship of the president of the *Reichsbank*. Its composition resembled that of the exchange inquiry; besides the national government, the states of Prussia, Bavaria, Saxony, Württemberg, Baden, and Hamburg were represented on the commission. Here, too, the essence of sober analysis was lost in the maze of loose debate.[24] Forensic techniques dominated the procedure, with the government sitting patiently in the jury box.

The common feature of all these inquiries was that they were the product of executive discretion. With one exception, they were called forth by decree. In their membership the bureaucracy was well represented. The government was anxious to keep the strings of control in its hands. It used commissions of inquiry only as a last resort whenever the resourceful ministerial staffs felt in need of special piloting on the uncharted seas of modern industrial development. But the civil service was willing to learn and eager to resume command of the situation. Officially organized investigations were confined in Germany to the rôle of devices of crisis government. They never gained the same popularity as did royal commissions in England. While in Great Britain an official document undertook to standardize the procedure of investigating committees as late as 1910,[25] the *Kaiserreich* was at about the same time ready to take leave from the whole idea of *ad hoc* inquiries. Those of the preceding decade had proved disappointing. Deteriorating into pompous forums for group pleading, they had failed to reveal anything new even to the casual observer or to consolidate group opinion into defined alternatives of political action. Even as ventilators of mass psychoses, their record was uninspiring. That this rating was fairly universal may be inferred from the fact that research on the methods of investigating committees had practically come to a close before 1890.[26] At the end of the century, the bureaucracy again stood at the helm.

Shortly before the collapse of 1918, parliamentary government was initiated in Germany by constitutional amendment.[27] In the pursuit of

[23] For references, see Eduard Rosenbaum, "Deutsche Enqueten," *Wirtschaftsdienst*, Vol. 11, p. 1025 (1926).

[24] For references, see Rosenbaum, *ibid.*, p. 1026.

[25] *Report of the Departmental Committee on the Procedure of Royal Commissions* of June 25, 1910 (Cmd. 5235).

[26] Cf. F. J. Neumann, *Die deutsche Fabrikgesetzgebung und die betreffs derselben zu veranstaltende Enquete* (Jena, 1873); Georg Embden, "Das Verfahren bei Enqueten über soziale Verhältnisse," *Schriften des Vereins für Sozialpolitik*, Vol. 13, pp. 1ff. (1877); Schnapper-Arndt, *Zur Methodologie Sozialer Enqueten* (Frankfurt a/M., 1888).

[27] Act of October 28, 1918 (*Reichsgesetzblatt*, p. 1274).

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his policies, the chancellor was made dependent on the confidence of the Reichstag. The Weimar constitution of August 11, 1919, enlarged upon this principle. In addition, it explicitly vested the right of inquiry in the national legislature. Article 34 of the constitution provided: "(1) The *Reichstag* has the right, and upon the motion of one-fifth of its members the duty, to appoint investigating committees. These committees take in public hearings the evidence which they, or those who brought the motion, deem necessary. The public can be excluded by a two-thirds majority vote of the investigating committee. Special rules regulate the procedure of the committee and prescribe the number of its members. (2) The courts and administrative authorities are obliged to comply with the request of these committees for taking evidence; the files of the authorities must be submitted to them upon demand. (3) The provisions of the code of criminal procedure apply, so far as they are appropriate, to the investigations of the committees and to the procedure of the authorities called upon for taking evidence, provided, however, that the secrecy of letters, the mail, the telegraph, and the telephone remains inviolate."

This grant of power is the more sweeping since the constitution qualified the right of parliamentary investigation as a minority right.[28] And yet it cannot be said that *Reichstag* inquiries ever developed into a significant feature of Weimar democracy.[29] To some extent, the distinctly sporadic character of parliamentary investigations during the lifetime of the Republic reflects the confidence of the *Reichstag* in the integrity and efficiency of the executive and judicial branches of government. Another equally important cause was the widespread general reluctance to revive practices which in previous decades had impressed themselves upon the public mind as of questionable merit. Moreover, the ill-starred and politically exploited *Reichstag* inquiry into the causes of the World War and the conduct of warfare, inaugurated by the Constitutional Assembly as early as August 20, 1919, and the meager results of the Socialization Commission, organized in the same year as a "free scientific committee,"[30] were hardly suited to instill new enthusiasm. In the meantime, competing organizations had captured part of the field. Civil service unionism, especially the *Deutscher Beamten-Bund*, and the great "roof" associations of local government, since the Hitler revolution welded together into the *Deutscher Gemeindetag*,[31] engaged in independent investigations of controversial topics. The memorandum on the "need test"

[28] See Fritz Morstein Marx, *Beiträge zum Problem des Parlamentarischen Minderheitenschutzes* (Hamburg, 1924), p. 33.

[29] For references on the interpretation of Article 34, see Gerhard Anschütz, *Die Verfassung des Deutschen Reichs*, 14th ed. (Berlin, 1933), p. 216.

[30] For references, see Rosenbaum, "Enqueten," p. 1026.

[31] See Fritz Morstein Marx, "The New Roof over German Local Government," *National Municipal Review*, Vol. 23, pp. 255ff. (1934).

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in unemployment insurance and crisis relief administration, jointly published by the *Deutscher Städtetag*, the *Deutscher Landkreistag*, the *Reichsstädtebund*, and the *Deutscher Landgemeindetag* in January, 1933, is an instructive example of an inquiry undertaken solely under the responsibility of these semi-public bodies, although it is written in a distinctly polemical spirit.[32] Cities, towns, and counties throughout the country contributed local experiences and statistical data from which the memorandum was compiled at the headquarters of the "roof" organizations.

It took the unparalleled decline of the German national economy after the World War to revitalize the idea of commissions of inquiry on a larger scale. On recommendation of the cabinet, the *Reichstag* provided by act of April 15, 1926,[33] for the appointment of a commission of inquiry which was to survey comprehensively the potentialities of recovery.[34] Constitutionally, this commission was not a parliamentary investigating committee, but an "organ of the national government with a privileged status."[35] The states remained unrepresented, but were granted the right to demand a hearing before the commission; at the same time, the national cabinet was restrained by special provision from taking any measures which might affect the conduct of the inquiry without having previously reached an agreement with the commission. Nine members were to be selected by the cabinet, nine others by the National Economic Council, and eleven by the Reichstag. In addition, the commission was empowered to appoint six members according to its own discretion. The chairman held no membership, but was simply an agent of the cabinet, appointed with the consent of the commission. While parliamentary immunity was expressly bestowed upon the chairman and the commission members, they were placed, on the other hand, under the statutory obligation of official secrecy. The right to subpoena witnesses and to examine them under oath was reserved to the chairman, who was also authorized to exclude the public from the hearings whenever exceptional circumstances warranted such a measure. Official information was placed at the disposal of the commission; at its request, the central departments of the Reich and the states were to give their full coöperation.

While the technical set-up came close to a satisfactory solution, the failure of the act of 1926 to place concisely formulated problems before the commission soon made itself felt. The inquiry split up in a number of sub-committees which began to struggle with the boundless task of "tak-

[32] *Die Hilfsbedürftigkeitsprüfung in der Arbeitslosenversicherung und Krisenfürsorge* (Berlin, 1933).

[33] *Reichsgesetzblatt*, I, p. 195.

[34] Cf. the articles by W. Grävell, *Allgemeines Statistisches Archiv*, Vol. 16, pp. 357ff. (1927); Zahn, *loc. cit.*, pp. 1084ff.; Alfred Bertram, *Wirtschaftsdienst*, Vol. 11, pp. 701ff. (1926); Eduard Rosenbaum, *ibid.*, pp. 1053ff.

[35] Bertram, *ibid.*, p. 702.

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ing stock of the German economy."[36] Publication followed publication, and while some of them, written by leading economists, are excellent presentations, the commission in the course of time seemed to bury itself under the weight of its own output. The diffuse character of the whole venture is well illustrated by the fact that the inquiry never found sufficient strength, detachment, and concentration to turn out a final report. The so-called concluding volume was hardly more than a pathetic index of unrealized good intentions. This tremendous enterprise, largely unconsummated, closes the chapter of commissions of inquiry under the Weimar constitution. The solely ornamental Brauns Committee on Unemployment Insurance (1931), born out of economic panic only to withdraw into confusion, was an anti-climax. Its main effect was to give the cabinet an excuse for postponing the overdue reform of unemployment insurance, crisis assistance, and unemployment relief.

If German experience with commissions of inquiry offers any lessons at all, they appear to be these: First, the investigating process depends for its success on a regularized procedure which combines a reasonable measure of flexibility with consistency in the pursuit of clearly defined objectives. For that reason, especially the chairman should have a close grasp of the problem before the commission, a sense of methodical approach, and experience in the conduct of hearings. He must not be satisfied with a mere gathering of evidence, but possess the ability to "spot" it and to force it out into the open. Second, the commission should be in a position to feel free from any obligations toward the appointing agency as well as toward the witnesses. Its status should correspond as closely as possible to the independence of the judiciary. Third, the size of the commission should be kept within narrow bounds. The larger the membership, the greater is the danger of diffusing responsibility. And fourth, the findings of the commission should include the full record of the evidence assembled. Not infrequently, this material has proved far more valuable for future attacks on the same problem than the conclusions reached by the commission in its final report. Many commissions of inquiry have fallen short of really mastering their assignments, and yet as fact-finding institutions have made a lasting contribution to the understanding of concrete situations.

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The New Constitution of the Soviet Union. In 1934, the Soviet Union rounded out the first great cycle in its development. The fruition of the Five-Year Plan, the general collectivization of agriculture, the entry of the Soviet Union into the councils of the nations of the world—these and

[36] Zahn, *loc. cit.*, p. 1084.

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many other successes of the Communist régime were evidences of great achievement. Peace and order and economic progress had been attained at home; the stability of the government had been clearly demonstrated, and friends had been made abroad. The social and economic structure of the country had been completely transformed, and the Socialist community was now a going concern.

Early in 1935, it became known that the Soviet Union was contemplating important constitutional changes, designed to bring the legal and governmental structure into closer harmony with the new social and economic order. Stalin's proposals for constitutional reform were discussed and approved by the Central Executive Committee of the Communist party of the Soviet Union at its meeting preceding the Seventh All-Union Congress of Soviets in February, 1935.[1] The proposals were then laid before the All-Union Congress of Soviets by Premier Molotov, in a speech on soviet democracy. The All-Union Congress at this time voted that the new constitution should incorporate some of the best features of parliamentary democracy, that the representation of urban and rural voters should be equalized, that voting should be secret and direct, and that the All-Union Central Executive Committee should appoint a constitutional commission to draft the new organic law. The newly elected All-Union Central Executive Committee appointed the constitutional commission at its first meeting on February 7, 1935, making Stalin the chairman and including in its membership all of the most prominent leaders of the Communist party.[2]

After more than a year's time, during which its work was kept strictly secret, the constitutional commission reported the draft of a complete new constitution to the All-Union Central Executive Committee in June, 1936.[3] The draft was approved for submission to the All-Union Congress, and a special Congress was summoned to meet on November 25, 1936, for the purpose of considering the new constitution.[4] The All-Union Central Executive Committee also approved plans for the publication of millions of copies of the draft constitution, and invited all citizens to join in the discussion of it. Extraordinary interest in the document has been displayed in every part of Russia,[5] and throughout the world.[6] Some

[1] "A Congress Which has Begun a New Epoch of Soviet Democracy," *Communist International*, Vol. 12, pp. 254–268 (June, 1935), at p. 261.

[2] *New York Times*, February 7, 8, July 8, 1935; Sidney and Beatrice Webb, *Soviet Communism: A New Civilization?* (London: Longmans, Green and Company, 1935), Vol. 1, pp. 84–87.

[3] Associated Press dispatch, June 11, 1936; *London Times*, June 15, 1936; *Le Temps*, June 14, 1936.

[4] The alteration of the fundamental principles of the constitution of 1923 is an exclusive power of the All-Union Congress. See Art. 2.

[5] See an interesting account of the discussion of the new constitution by Russian

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amendments of a detailed character will doubtless be introduced into the text before its adoption; but the All-Union Congress may be depended upon to vote the new constitution into effect, in substantially the form in which it came from the constitutional commission.

The new soviet constitution, unlike that which it will replace, is not prefaced with a declaration containing denunciations of capitalism and extending an invitation to the proletariat of other nations to form soviet republics and affiliate with the Soviet Union. The first article declares: "The Union of Soviet Socialist Republics is a Socialist state of workers and peasants." In this and other articles it is made clear that the Soviet Union is committed to a Socialist, rather than a Communist, policy. The Communist formula of service and reward—"From each according to his ability, to each according to his need"—now appears as, "From each according to his ability, to each according to his work."[7] The Socialist policy of the soviet state is further revealed in the recognition, besides state ownership,[8] of, first, the right of ownership by collective farms and other kinds of coöperative societies in livestock, implements, produce, and buildings;[9] and, second, the right of ownership by individuals in small-scale enterprises, the income and savings derived from labor, dwelling houses, household furniture, and articles for personal use and comfort.[10]

The new constitution increases the number of member states in the Soviet Union from seven to eleven. The increase comes about by the admission of the three parts of the former Transcaucasian Socialist Federated Soviet Republic (Azerbaijan, Georgia, and Armenia), and two former autonomous republics of the R.S.F.S.R. (Kazak and Kirghiz), as member states of the Soviet Union.[11]

The member republics retain their dubious right to secede from the U.S.S.R.,[12] and the guaranty that their boundaries may not be changed without their own consent.[13] The member republics will continue to have

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citizens in M. Brown, "The Toilers of the Soviet Union on the Draft of the New Constitution," *Communist International*, Vol. 13, pp. 1041–1047 (August, 1936). A precedent for the submission of the constitution to popular discussion was set in the nation-wide debate on the new marriage law in 1926. See S. and B. Webb, *op. cit.*, Vol. 1, pp. 447–448.

[6] English translations of the full text of the draft for the new constitution have been published as follows: *The New Soviet Constitution* (New York, International Publishers, 1936, pp. 31); *New York Times*, June 26, 1936; *Daily Worker*, June 29, 1936; *Communist International*, Vol. 13, No. 7 (July, 1936); *Soviet Russia Today*, Vol. 5, No. 6 (August, 1936).

[7] Art. 12, Par. 2.

[8] Art. 6.

[9] Art. 7, Par. 1; Art. 8.

[10] Art. 7, Par. 2; Arts. 9–10.

[11] Arts. 13, 22–29.

[12] Constitution of 1923, Art. 4; new constitution, Art. 17.

[13] Constitution of 1923, Art. 6; new constitution, Art. 18.

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a formal equality of representation in the Soviet of Nationalities; but, as under the old constitution, the total representation of a member republic will depend upon the number of autonomous subdivisions that it contains.[14] Hence the R.S.F.S.R. will have 40 per cent of the membership of the Soviet of Nationalities. Under the new constitution, the member republics will enjoy new privileges and guaranties. Federal law will have the same effect in all member republics.[15] Home rule is guaranteed to the extent that each member republic may adopt and amend its constitution, subject to the provisions of the constitution of the U.S.S.R.[16] A member republic may demand that the supreme legislative organ of the U.S.S.R. be summoned into special session,[17] or that a nation-wide popular referendum be held on a question of public policy.[18]

The new constitution does not reveal any marked tendency to centralize power in the organs of the U.S.S.R. The categories of power vested in the Union are very similar to those enumerated in the constitution of 1923. Under the new constitution, the competence of the Union will be increased by the grant of the general authority of "safeguarding the security of the state,"[19] the right to establish a system of state insurance of property,[20] and the power to establish a system of national economic accounting.[21] On the other hand, the powers of the Union to legislate on migration, to establish a uniform system of weights and measures, to organize the general statistics of the Union, and to settle disputes between member republics are not repeated from the constitution of 1923.[22]

The powers not delegated to the Union are reserved to the member republics.[23] As under the constitution of 1923, which contained a similar provision,[24] the member republics will have little autonomy if the powers granted to the U.S.S.R. are fully exercised. Specifically reserved to the member republics under the new constitution, however, is the power to adopt and amend their own constitutions, to ratify the constitutions of their own autonomous subdivisions, to approve their own budgets and economic plans, and to grant pardon and amnesty to persons convicted in their own courts.[25] The former plan of securing to the U.S.S.R. exclu-

[14] New constitution, Art. 35; cf. Paul P. Gronski, "The Soviet System of Federalism," in this REVIEW, Vol. 23, pp. 159–167 (Feb. 1929), at p. 162.

[15] Art. 19. [16] Art. 16. [17] Art. 46, Par. 2.

[18] Art. 49, d. [19] Art. 14, h.

[20] Art. 14, n. Insurance has for some time been a state monopoly under the control of the Union Commissariat of Finance. See S. and B. Webb, *op. cit.*, Vol. 1, pp. 119–122.

[21] Art. 14, r. This is likewise not a new activity of the Union. See S. and B. Webb, *op. cit.*, Vol. 2, pp. 779–785.

[22] Constitution of 1923, Art. 1, n, s, t, x.

[23] New constitution, Art. 15. [24] Constitution of 1923, Art. 3.

[25] New constitution, Art. 60; cf. constitution of 1923, Art. 69.

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sive administrative control in a broad field is carried on by the new constitution. The Union will have exclusive jurisdiction in matters relating to defense, foreign affairs, foreign trade, railways, communications, water transport, and heavy industry.[26] Practically all other branches of governmental activity fall into the classification of concurrent powers; for the supreme administrative organ of the U.S.S.R. will have authority to coördinate and direct the activities of the member republics.[27]

The part of the new constitution that has attracted most attention is the bill of rights. It has been widely heralded as the establishment of individual liberty in full accord with the democratic traditions of Western Europe and America. Whether this bill of rights will prove to be a real change in the spirit of Communist rule remains to be seen. It is at least significant that several rights—including the right to education at public expense, religious liberty, freedom of the press, association, assembly, and street demonstrations—are repeated in the new constitution in language that is very similar to that used in the "Declaration of the Rights of Laboring and Exploited Peoples" of the soviet constitution of 1918.[28] It will indeed be unfortunate for the Russian people if the new guaranties prove no more effective than the old. The new constitution also contains guaranties of a limited right of private ownership of property, the right to work, the right to rest from labor, the right to assistance in illness and old age, freedom of speech, and inviolability of the person, home, and correspondence.[29] The bill of rights is exceptionally complete, and is well-designed to express the social philosophy of the Communist party. It also contains an enumeration of some of the means for the realization of rights. The bill of rights is not, however, self-executing. In order to make its guaranties of individual liberties effective, supplementary legislation will have to be passed, the physical facilities for the realization of some of the rights will have to be provided, and its provisions will have to be enforced against the Communist rulers of the state.

Correlatively, the new constitution enumerates the duties and obligations of citizens to include work, obedience to the constitution and laws, observance of labor discipline, honest fulfillment of social duties, respect for the rules of the Socialist community, and universal military service for able-bodied males.[30]

The new constitution grants the suffrage generally to all citizens of eighteen years and over, thus removing all the former restrictions. The vote may not be denied on account of sex, race or nationality, reli-

[26] New constitution, Art. 77. [27] Art. 68, a.

[28] Arts. 121 (17), 124 (13), 125 (14), 125 (15), 126 (16). The first citation refers to the new constitution; that in parenthesis to the soviet constitution of 1918.

[29] Arts. 7, Par. 2; 10, 118, 119, 120, 125, a; 127, 128.

[30] Arts. 12, Par. 1; 130–133.

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gion, educational or residential qualifications, social origin, property status, or past activity. The only persons disqualified are the mentally deficient and those deprived of electoral rights by the courts. Soldiers and sailors in active service are guaranteed the right to vote.[31]

Under the new constitution, all elections are to be conducted by secret ballot, instead of by a show of hands as in the past.[32] The details of the new electoral procedure are not dealt with in the constitution. The management of secret elections in a country the size of the Soviet Union, with the voters entirely unfamiliar with the procedure, will be an administrative problem of first magnitude. The right of a majority of the electors in a district to recall a deputy in any soviet is continued in the new constitution.[33]

The electoral system of the Soviet Union will be completely transformed by abandoning the principle of functional representation in the election of the primary organs of the soviet system, by abolishing the series of indirect elections, through which the higher soviets have been constituted, and by equalizing the representation of the urban and rural electorates in the higher soviet bodies. All legislative bodies, i.e., soviets, from the lowest to the highest (with the exception of the Soviet of Nationalities) are to be elected directly from geographical districts. The legislative organ of the U.S.S.R. is to be bicameral in form. It will be known as the Supreme Council of the U.S.S.R. The lower chamber, the Soviet of the Union, will have about 575 members elected directly for a term of four years from single-member districts of about 300,000 population each.[34] The application of one ratio of representation over the whole country will equalize the representation of urban and rural areas. The upper chamber, the Soviet of Nationalities, will have 238 members elected indirectly by the legislative organs of member republics, autonomous republics, and autonomous provinces.[35] It is thus clear that the former All-Union Congress of Soviets, with its large membership of about 1,500 deputies, will be abolished, and the organ formerly known as the All-Union Central Executive Committee will become the supreme legislature. The member republics and all their political subdivisions will have unicameral soviets, elected in each case by universal, secret, and direct suffrage from geographical districts, according to ratios of representation as fixed in the constitutions of the member republics and autonomous republics.[36]

The Supreme Council is to be convened twice a year.[37] Its two chambers are declared coördinate in authority.[38] If a dispute arises between the two chambers, the matter is first to be referred to a conciliation commis-

[31] Arts. 134–138.
[32] Art. 140.
[33] Art. 142.
[34] Art. 34.
[35] Art. 35.
[36] Arts. 57, 58, 89, 90, 94, 95, 96.
[37] Arts. 41, 46.
[38] Arts. 38, 39.

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sion. If no agreement can be reached by this method, or by reconsideration in the two chambers, the constitution authorizes the Presidium to dissolve both chambers and fix the date of new elections.[39] The new constitution states that legislative power is exercised exclusively by the Supreme Council.[40] However, a broad ordinance-making power is vested in both the Presidium and the Council of People's Commissars.[41] These bodies may continue, as in the past, to rival the Supreme Council in legislative authority. It will also remain to be seen whether the Central Executive Committee of the Communist party will continue to play as prominent a part in legislation as in recent years.[42]

In the U.S.S.R. and each member republic, the executive authority is to be divided in a rather curious manner between a Presidium and a Council of People's Commissars. The Supreme Council of the U.S.S.R., in a joint session of both chambers, will elect its Presidium of thirty-seven members.[43] Instead of having seven presidents to preside in turn as under the present constitution,[44] this body is to have one chairman. The office of chairman of the Presidium of the Supreme Council of the U.S.S.R. may evolve into a position similar to the chief of state in other countries. The Council of People's Commissars is "formed," as the new constitution says,[45] by the Supreme Council, presumably in joint session. This will probably mean in practice the ratification by the legislature of the nominations for ministerial appointments, made by the person put forward by the Communist party to head the government.

The Council of People's Commissars of the U.S.S.R. is granted "general control in the sphere of relations with foreign states,"[46] but the Presidium appoints and removes ambassadors and ministers to foreign countries, receives the representatives of foreign states, and ratifies treaties.[47] The Council of People's Commissars is charged with the general direction of the armed forces,[48] but the Presidium appoints and removes the commander-in-chief and proclaims general or partial mobilization.[49] In these and other respects, the powers of the Presidium seem to be more comprehensive than those of the Council of People's Commissars. In practice, the former will surely gain ascendancy over the latter, in spite of the constitutional declaration that the Council of People's Commissars is "the supreme executive and administrative organ of state power."[50]

The new constitution declares that the Presidium is "accountable" to

[39] Art. 47.
[40] Art. 32.
[41] Arts. 49, b; 66, 68, b, c.
[42] S. and B. Webb, *op. cit.*, Vol. 1, p. 423.
[43] Art. 48.
[44] Constitution of 1923, Art. 27; S. and B. Webb, *op. cit.*, Vol. 1, p. 91.
[45] Art. 70.
[46] Art. 68, d.
[47] Art. 49, l, m, n.
[48] Art. 68, e.
[49] Art. 49, i, k.
[50] Art. 64.

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the Supreme Council,[51] and that the Council of People's Commissars is both "accountable" and "responsible" to the Supreme Council.[52] For the enforcement of ministerial responsibility, two devices are provided. In the first place, the Supreme Council is authorized to appoint investigating and auditing commissions on any matter, and all institutions and officials are obliged to comply with the demands of these commissions and to furnish the necessary information and documents.[53] In the second place, any deputy in either chamber of the Supreme Council may address a question to the Council of People's Commissars as a whole, or to any individual commissar, and the question must be answered either orally or in written form within three days.[54] To suppose that these provisions will result in the establishment of parliamentary government in the Soviet Union as in Great Britain or France would, however, be a great mistake. There is no provision in the new constitution authorizing the Supreme Council to dismiss individual commissars, or the whole Council of People's Commissars. But the Presidium, acting when the Supreme Council is not in session, is authorized to dismiss individual commissars—though only at the instance of the chairman of the Council of People's Commissars.[55] There is no possibility of the dismissal of the chairman, i.e., the premier. This provision undoubtedly implies that the Supreme Council has as much power as the Presidium, but it will be noted that the legislative branch has no way to proceed on its own initiative to remove a minister or to defeat the whole ministry.

Parliamentary government presupposes the struggle of political parties for office. The new soviet constitution recognizes only the Communist party, and secures it in its position as "the vanguard of the toilers in their struggle to strengthen and develop the Socialist system," and as "the leading nucleus of all organizations of the toilers."[56] Citizens of the U.S.S.R. are authorized to organize trade unions, coöperative societies, youth organizations, sport, defense, cultural, technical, and scientific societies —but no political party other than the Communist.[57] The right to nominate candidates is granted to a number of organizations—Communist party organizations, trade unions, coöperative societies, youth organizations, and cultural societies—but the Communist party is the only political party in the list.[58] It is also safe to assume that the nominees of other organizations will have to be acceptable to the Communist party. The Council of People's Commissars will undoubtedly continue to be composed entirely of Communists, and the Supreme Council will have an overwhelming majority of Communists. There will thus be no possibility of a conflict between the two authorities. There will be no ministerial

[51] Art. 48, Par. 2. [52] Art. 65. [53] Art. 51.
[54] Art. 71. [55] Art. 49, f. [56] Art. 126.
[57] *Ibid.* [58] Art. 141, Par. 2.

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crises. The Council of People's Commissars will not appear before the Supreme Council and ask for a vote of confidence. Any disagreements or personal rivalries within the Communist party itself will be ironed out within the party councils, instead of being brought under the light of parliamentary inquiry.

The provisions for investigating committees and the questioning of ministers are, however, a great advance in soviet constitutional practice. They are a development of the doctrine of "self-criticism." They open up opportunities for the airing of grievances. They may serve as a useful check upon the powerful bureaucracy, which is an accompaniment of socialism.

The new soviet constitution introduces some changes of importance in the court and law-enforcement system. The judges in the "people's courts," i.e., the local courts of limited jurisdiction, are to be popularly elected, with terms of three years.[59] One provision states that all judges are independent and subject only to the law,[60] which, if effective, will amount to a fundamental transformation of the judicial branch. The people are guaranteed the use of their native languages in courts, open trials, and the right of defense.[61] The chief prosecutor of the U.S.S.R. is secured in his position as chief law-enforcement officer, with extensive powers of supervision over all local prosecutors.[62] A significant omission in this part of the new constitution is the absence of any provisions relating to the notorious G.P.U., or secret police; although the successor to this organization, the new Commissariat of Internal Affairs, is enumerated elsewhere along with the other commissariats.[63]

The new instrument may be amended only by a two-thirds vote in both chambers of the Supreme Council of the U.S.S.R.[64]

Taken as a whole, the new constitution of the Soviet Union is a long step forward in the march of a great nation towards ultimate self-government. Its many liberal and democratic features do not mean that the Communist dictatorship is relaxing its hold, nor that the dictatorship of the proletariat is to be replaced by conventional bourgeois democracy.[65] On the other hand, the guaranties of rights, the electoral reforms, and the tendencies towards parliamentarism are not mere shams, designed to hoodwink the Russian people and to recruit allies among the democratic countries in preparation for a contemplated struggle against fascism and imperialism. The liberal movement in the Soviet Union indicates that its rulers are confident of their strength, and that they feel that they can

[59] Art. 109. [60] Art. 112. [61] Arts. 110, 111.
[62] Arts. 113–117. [63] Art. 78. [64] Art. 146.
[65] See an argument to the effect that the dictatorship of the proletariat is unimpaired, in *Communist International*, Vol. 13, pp. 930–940 (August, 1936), at pp. 939–940.

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safely relax the repression which has been the rule since the Revolution. The enemies at home have been reduced to impotence, and the opportunity is being seized to try to win them over to support of the new régime. The Communist rulers of Russia seek what has been the passion of all dictators throughout the course of history—continuance in office with the freely-given consent of the people.

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The New Constitution for India. Without question, the most important legislation passed in 1935 by the British Parliament was the Government of India Act[1] which received the royal assent on August 2, 1935. This statute has numerous claims to careful study by political scientists. On a purely quantitative scale, the Act has two obvious grounds for distinction. It will serve for some years as the fundamental law for one-fifth of the world's population; and it will operate—if all goes well—over the entire subcontinent of India. In the second place, though one hesitates to offer this as a recommendation, the new statute is by all odds the most enormous constitution in the world. In comparison with its bulk, the most notoriously extensive American constitutions (e.g., those of Oklahoma and California) pale into insignificance. The Government of India Act of 1935 contains 478 sections occupying exactly 300 pages, together with a further 130 pages of schedules. But perhaps it should be explained that the new act really contains two constitutions: one for India (210 pages plus schedules) and one for Burma (90 pages plus schedules).

The first thing that is to be noted about the new Indian constitution is that it was not the product of Indian statesmanship in the way that the Canadian, Australian, South African, or Irish Free State constitutions were domestic products. Each of these was first agreed upon locally in the appropriate dominion before being formally enacted in statute form by the British Parliament. Not so, however, the India Act. The only purely Indian project for a constitution[2] was never considered seriously as a possible basis of government. The new act of 1935 is as much the work and responsibility of the British cabinet as were the preceding acts of 1909 and 1919.[3] The most important preparatory stage was reached

[1] 25 & 26 George 5, ch. 42.

[2] Report of Nehru committee appointed by the All-Parties Conference in 1928 to determine the principles of a constitution for India.

[3] With respect to the origins of the Act, it may be observed that probably never before has a constitution-making body had as much documentary evidence before it. More than a dozen reports, scores of volumes of minutes of evidence, fill several feet of shelving. Since the Montagu-Chelmsford report on constitutional reforms (Cd. 9109 of 1918) and the supplementary Southborough report on franchise (Cmd. 141 of 1919) upon which the reforms of 1919 were based, there has been a constant

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with the appointment of the statutory commission contemplated by the act of 1919.[4] This commission, presided over by Sir John Simon, a Liberal, was named in 1927 and consisted of seven members of Parliament, but contained no Indian representatives, for which reason it was boycotted by the nationalist parties. The results of the Simon commission's inquiries were published in the report of 1930; volume one being a survey of existing conditions; volume two being the recommendations; and a dozen supplementary volumes containing the evidence and reports of Indian governments. The Simon commission's recommendations, however, were not accepted unquestioningly as the foundation of the new régime, for the Labor government was prepared to go much farther along the road of self-government. Accordingly, there were held in London the two Round Table Conferences, at which representatives of the English parliamentary parties discussed with nominees of the Indian princes and with certain British Indians the further elaboration of the new constitution. The Congress (Nationalist) party had abstained all along from participation in the discussions, though at last Gandhi was prevailed upon to come to London to discuss the most controversial points. Meanwhile the British Labor cabinet fell and was succeeded by the National government. The Labor policy was therefore checked, after the 1931 election, by the overwhelming Conservative majority; and the new government found itself making concessions, not to the Labor opposition, but to the insurgent "die-hards" within its own ranks. The new government's policy was expounded in a white paper of 1934; but in drafting the bill the cabinet utilized the machinery of a joint committee of the two houses of Parliament, representative of all parties except the "die-hards," who refused to participate. Finally, the bill was reported to Parliament, debated at length in both houses (numerous Lords' amendments were accepted), and at last was passed at the end of July, 1935.

Such, in brief, is the history of the Government of India Act. Originally planned by the Labor cabinet, it was carried to completion by the National government, which had very different purposes and theories in mind. The gentleman responsible for its final form and for steering it through the legislature was Sir Samuel Hoare, then Secretary of State for India.

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flood of voluminous papers upon the Indian government, its working, and possible improvement. In addition to the bulky annual report of political and social progress, there have been the Lee report on the superior civil services (Cmd. 2128 of 1924), the Muddiman reforms enquiry (Cmd. 2360 of 1925), the Butler report on the Indian states (Cmd. 3302 of 1929), and the interim statutory report on education (Cmd. 3407 of 1929), not to mention the lengthy reports on agriculture and money.

[4] Section 41, as amended, stipulated that within ten years a commission should inquire into "the working of the system of government, the growth of education, and the development of representative institutions in British India."

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Dominion Status. The subject of dominion status was among the most discussed topics at all stages of the bill, and was the major issue at the second reading in February, 1935. A careful reading of the debates leads one to the definite conclusion that India does not now have, and, even after the federation is effected, will not have dominion status. Yet it may be confidently asserted that dominion status is within sight, and that it will be attained the moment unhindered responsible government proves workable.

The progressive association of Indians in the government of their country was enunciated as part of the British policy after the Indian Mutiny. But the most decisive statement occurs in the preamble to the Government of India Act, 1919,[5] which formally declared the policy to be the "gradual development" of self-government and "progressive realization" of responsible government. The political implications were slowly perceived with India in the League of Nations and with the passage of the Statute of Westminster. An additional difficulty was created by the declaration of the Viceroy, Lord Irwin, in October, 1929, that Indians would be associated in drafting the new constitution. Intended to pave the way for a good reception of the Simon report, this announcement largely undermined the report and aroused the antagonism of the "die-hards" of the Conservative party under the leadership of Mr. Winston Churchill. The crisis came at the second reading of the India bill (February 11, 1935) over the omission of the 1919 preamble. The Labor (opposition) motion explicitly recognizing India's right to dominion status was defeated, as were the eighty or more Conservatives who voted against the government (but for other reasons); but the government agreed to except the preamble of 1919 from the repealing clause. The result is that while the National government was able to resist the pressure of the "die-hards" within the Conservative party who sought to limit the grant of responsible government, it also refused a clear endorsement of dominion status as demanded by the Labor party. Dominion status is not accorded by the new statute, but the promise of 1919 still holds, and its attainment is simply a matter of time and capacity.

All-India Federation. One of the chief features of Indian government before 1919 was the concentration of authority in the hands of the central authority. Accordingly, the Montagu-Chelmsford reforms, which were intended to introduce provincial responsible government as soon as possible, provided for a considerable degree of devolution of both legislative and executive authority. Decentralization had been introduced in increasing extent by the successive acts of 1861, 1892, and 1909, but it was only with the act of 1919 that complete responsibility for certain subjects was left to the provinces. The new constitution of 1935 dis-

[5] 9 and 10 George 5, c. 101.

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places the tentative devolution and creates in its place a thoroughgoing federal relationship.

The all-India federation, which will exclude both Aden and Burma, is to have a two-fold aspect. On the one hand, there are to be the eleven governors' provinces of British India which are named specifically in the act.[6] These provinces have legislative, executive, and judicial systems laid out by the Act and with jurisdiction over designated "provincial" powers. This part of the Act is to come into operation by royal proclamation,[7] and is expected to be effective early in 1937. On the other hand, the federation is also expected to include the Indian states. It must be remembered that one-third of India and more than one-fifth of the population are not under British rule, but are under about five hundred native autocratic rulers, who are in various stages of dependence upon the king-emperor. Though these rulers vary enormously in rank, wealth, and importance, they are not yet in British India nor under the legislative jurisdiction of Parliament. Accordingly, they participated in the Round Table Conferences (as they do in the Chamber of Princes) upon terms of considerably greater independence than the other Indian delegates. It was at the opening of the first Round Table Conference in 1930 that the path to federation was made easy by the notable speech of the Maharaja of Patiala, who accepted the ideal of a federated India. Parliament was not able to provide by its own enactment for the adherence of the princes, and in consequence the entrance of the states into the federal system has to be by individual "instruments of accession." In these, each ruler is to declare his acceptance of the Act, stipulate the subjects on which federal authority may extend to the state, and agree upon the method of federal execution within it.[8] There are, of course, limits to the terms of adhesion.[9] The federation, so far as the states are concerned, can come into effect only[10] when the adhering states are such as to be entitled to fifty-two (i.e., one-half) of the possible representation allotted the princes in the Council of State, and when the aggregate population of such states amounts to at least one-half of the total population of the states.[11]

Parliament has been unable to provide for the new constitution apply-

[6] Until 1935, there were nine provinces, including Burma (added in 1923) and Central Provinces (added in 1920). To the existing provinces (exclusive of Burma)—Madras, Bengal, Bombay, United Provinces of Agra and Oudh, the Punjab, Bihar, the Central Provinces and Berar, and Assam—there are now added (1936) the North West Frontier Province, Orissa (set off from Bihar, which the Simon commission had characterized as "the most artificial unit of all"), and Sind (previously styled a "province," but joined to Bombay).

[7] Sec. 477. [8] Sec. 6. [9] Set out in Schedule 2.

[10] " . . . if an address in that behalf has been presented [to the king] by each House of Parliament." [11] Sec. 5.

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ing to the princes without their consent. That the adhesion of the states will undoubtedly be obtained may now be taken for granted. It will mean the end of the peculiar position of the native rulers, protected as they have been until now by British arms but subject to intervention by British officials under varying circumstances. Indeed, though the Act may prove a definite break with the past, the fact is that the princes have much to gain. While accusations of pressure and bribery (in the form of remission of tribute, etc.) have been made, it is equally true that their interests dictate entrance into the federation in the face of insurgent radicalism, economic nationalism, tariffs, etc. In the course of 1935, doubts were raised whether the states would accede to the federation.[12] But after the passage of the Act, the Maharajah of Patiala, chancellor of the Chamber of Princes, circularized the other rulers to the effect that the act satisfies the conditions laid down by the Chamber of Princes.[13] The conciliatory attitude of the British government toward the native rulers had provoked much bitter criticism in several quarters; for it is regarded as entirely unjust that the new Indian federation is to be constructed with the consent of the princes, but is to be imposed upon the natives of British India regardless of their objections.

Federal Division of Powers. Under the act of 1919, a certain degree of local control had been introduced by the specific grant of certain powers to provincial authorities and by introduction of ministerial responsibility on the "transferred" subjects (such as local government, health, education, etc.). In the new act, a full and complete federal relationship is established between the central government and the constituent parts.[14] In the case of the native states, as already noted, the instrument of accession must specify the matters with respect to which the federal legislature may make laws; for "no other federal law may be made extending to them."[15] This provision was inserted because it was found impossible to get agreement among the princes at the Round Tables respecting the scope of federal authority. Yet it is provided that no accesion will be accepted that is "inconsistent with the scheme of federation" embodied in the Act.[16]

In general, the federal legislature "may make laws for the whole or any part of British India or for any federated state, and a provincial legislature may make laws for the province or any part thereof."[17] Then the Act proceeds to become much more specific. The federal powers are exclusive ("the federal legislature has, the provincial legislature has not

[12] Cf. *Views of the Indian States.* Cmd. 4843 (1935).
[13] *London Times*, August 25, 1935.
[14] Part V and Schedule 7. [15] Sec. 101.
[16] The possible variations are enumerated in Schedule 2.
[17] Sec. 99.

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. . .") in matters relating to 59 subjects:[18] armed forces, external affairs, the church, legal tender, public debt, posts and telegraphs, pensions, public works, census, immigration, imports and exports, rail-shipping, major port authorities, territorial fishing waters, aircraft, copyright, bills of exchange, explosives, opium, inter-provincial corporations, industries, inter-provincial insurance and banking, federal elections, salt, state lotteries, naturalization, income and inheritance taxes (except agricultural), and a certain number of institutions, such as the Imperial Library and two universities—Benares Hindu and Aligarh Muslim. The exclusive powers of the provincial legislatures are similarly enumerated in a list of 54 items:[19] justice, order, provincial courts, police, public debt, works, elections, local government, health, education, water, agricultural prices, food, poor relief, stage and cinema, gambling, land revenue, excise duty, etc.

But, as in most recent federal systems, the powers of federal and provincial government are not left as unrelated as in the American and Canadian precedents. The two legislatures have concurrent powers over a further list of 25 topics:[20] criminal law and procedure, civil procedure, marriage and divorce, wills, trusts, contracts, bankruptcy, press, the professions, etc., with final authority vested in the federal government when it chooses to exercise its power. A novel solution for the problem of "residual" powers has been adopted: the governor-general ("in his discretion") may empower either federal or provincial legislature to deal with the unspecified and unenumerated matters. Finally, it must be observed that the federal authority may become truly national on any matter, for the federal legislature may make legislation on all provincial matters "except for a province or any part thereof,"[21] and may do so for two or more provinces at their request and subject to their repeal.[22]

The federal relationship is further carried out in both executive and judicial departments. The executive authority of the federation extends to "matters with respect to which the federal legislature has power to make laws," together with the armed forces, but expressly excluding the subjects of the provincial legislatures and of the states.[23] A special part of the Act[24] is concerned with administrative relations between the federation, provinces, and states; while a further part[25] is even more detailed on matters of finance, property, contracts, and suits relating to the government.

Every student of administration in a federal system will perceive reasons for the "obligations" which are laid out in Section 122. "The executive authority of every province and federal state shall be so exer-

[18] List I of Schedule 7. [19] List II of Schedule 7.
[20] List III. [21] Sec. 100 (4). [22] Sec. 103.
[23] Sec. 8. [24] Part VI. [25] Part VII.

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cised as to secure respect for the laws of the federal legislature which apply to that province or state" and "shall be so exercised as not to impede or prejudice" the federal administration.[26] Further, "in the exercise of the executive authority of the Federation in any province or federated state, regard shall be had to the interests of that province or state." Close coöperation is expected; and the governor-general may entrust federal authority "either conditionally on unconditionally" to the governors or rulers,[27] while the federal legislature may also "confer powers and impose duties" on provincial officers. An unexpected extension of the "concurrent" power is the provision of the same section[28] which enables the federal government to give "directions" to a province for the execution of federal laws which deal with a special list of concurrent powers:[29] factories, labor conditions, unemployment, insurance, trade unions and trade disputes, infectious areas, electricity, inland navigation, etc. Detailed provisions are made for revenue adjustment, e.g., the distribution of certain revenues or parts thereof (especially of salt and income taxes) to the provinces. The complicated financial relationship has now been investigated by a commission (under Sir Otto Niemeyer) entrusted with settling the financial arrangements before the Act comes into operation.

Provincial and state courts are left a matter of local concern, though certain provisions are made for the provincial high courts in the matter of the status of their personnel, etc.[30] The federal court, consisting of a chief justice and not more than six puisne judges, has original "declaratory" powers respecting the federation, provinces, states, and their respective rights under the Act; and has appellate jurisdiction in cases certified by the provincial high courts as involving "a substantial question of law as to the interpretation of the Act."[31] The federal legislature may also enlarge the appellate jurisdiction of the federal court within certain limits. Finally, it may be noted that appeal to His Majesty in council (i.e., the Judicial Committee of the Privy Council) is made possible in cases arising out of the original jurisdiction of the federal court or in cases where leave to appeal is given by that court or by the Privy Council.[32] It may be noted also that advisory opinions may be required of the federal court by the governor-general.[33]

The Legislatures. The federal legislature is to consist, as previously, of two chambers, the Council of State and the House of Assembly. It has a tenure of five years (unless earlier dissolved); ministers may appear before each chamber; and disputes between the two houses will be solved (as before) by joint sessions. When fully established, the Council is to consist of 156 representatives of British India and not more than 104

[26] Sec. 126. [27] Sec. 124. [28] Sec. 126 (2).
[29] Part ii of Schedule 7. [30] Chap. II of Part IX.
[31] Secs. 204–205. [32] Sec. 208. [33] Sec. 213.

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representatives of the states.[34] Tenure follows the American Senate precedent, but with a nine-year term, one-third retiring every third year. The House of Assembly is to consist of 250 representatives of British India and 125 from the Indian states.

The chief difficulties respecting the federal legislature (apart from "communalism," which is common to both federal and provincial legislatures) were the questions of suffrage and mode of election. So far as the latter is concerned, it was well known that the Government had agreed upon direct election of both federal chambers; but this was discarded for the House of Assembly by the "joint committee" of Parliament in 1934, though the reasons for such a decision have never been published. It must indeed be recognized that the attempt to establish a direct vote in constituencies of the size now to be used would be a very considerable undertaking in a country little experienced in democratic government. A province like Bengal with 37 representatives is almost as large as Great Britain, and is even more populous; Madras, with the same number, is larger than Italy in both area and population; the United Provinces, also with 37 representatives, though somewhat smaller than France in area, exceeds it in population. Direct election would mean the creation of 250 constituencies in a population of 337 millions, and would thus result in districts enormous in extent and with an electoral average of over one and one-half million inhabitants each. Accordingly, conservative influences resulted in the provision[35] that federal Assembly seats should be filled by indirect election, i.e., by the provincial legislative members who vote by the single transferable vote system of proportional representation. The "general," Sikh, Muhammadan, etc., members are to vote only for their respective types of representatives. On the other hand, without any reason at all apparently, direct election of the Council of State has been retained (though on a basis yet to be determined). The general result, however, is that the new national parliament does not represent the Indian people directly (except in the upper house, and therefore by a smaller electorate), but rests upon the local legislatures.

The provincial legislatures are bicameral in six provinces (Madras, Bombay, Bengal, United Provinces, Bihar, Assam) and are unicameral in the remainder.[36] The upper chambers, where they exist, are fairly small, varying from 21–22 in Assam to 63–65 in Bengal. A novel scheme utilized for Bengal and Bihar is the selection by their lower chambers of 27 and 12 members of the respective upper houses.[37] The provincial assemblies vary in size from 50 in the North West Frontier Province to

[34] Sec. 18. The suffrage qualifications are to be announced later.

[35] Schedule 1, par. 19. [36] Sec. 60.

[37] The slightly variable size of the councils is due to the provision for governors' nominees of one-fifth of the membership.

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215 in Madras, with an average size of 150. In a continent which has greater social diversity than Europe, it is evident that the franchise would present enormous difficulties if adult suffrage were not in force. The solution adopted has been the establishment of a separate set of qualifications for each province.[38] The general type of qualification—which is expected to extend the electorate to about thirty millions—may be taken from Madras, where the voter must be 21 years of age, have four months' residence, possess the appropriate property qualification or pay one of a list of direct taxes, or be literate in any language or dialect of India. Wives are qualified by their husbands' eligibility to vote. The "depressed classes," who are to vote first in a "primary" election for four candidates, are qualified by literacy or by local office-holding.

The chief subject of dispute in the provincial system (though it also applies to the federal legislature) has been the question of "communal" representation, i.e., the special representation of certain racial, religious, and social communities. The noteworthy social heterogeneity of the Indian population had already in the past led to the creation of "reserved" seats for Muhammadans and Sikhs. The claims of these two groups were based not only on their religious conflicts with the Hindus and with each other, but on their military predominance. They would not consent to a self-governing India if they were not in a special position which their numbers alone might not guarantee. Less than one-third of the population is Muhammadan, but they constitute the majority in Bengal and the Punjab. The three million Sikhs are practically confined to the Punjab. The Indian nationalists, and indeed liberal opinion generally, opposed communal representation as perpetuating class divisions, stereotyping social relations, and hindering the progressive realization of nationalism, unity, and self-government. But once the exceptions were made in favor of the Muhammadans, other claims were pressed on the Government: the "depressed" classes, or "untouchables," who constitute 28 per cent of the Hindus, the Marathas in Bengal, Anglo-Indians (Eurasians numbering 100,000), Indian Christians (4,500,000), Europeans (150,000). Once these were admitted by the pressure of British religious and imperialistic interests, it was easy for other groups to claim special protection in the way of reserved seats: women generally, and special groups of Muhammadan, Sikh, Christian women, the universities, as well as landowners, commercial, industrial, and labor interests.

The result is that each legislative chamber is a most complicated composite of general or territorial seats together with a large number of "reserved" seats filled by electors on the special registers, but with the same general suffrage qualification. In the federal House of Assembly (which, it must be remembered, is elected so far as British India is con-

[38] Schedule 6.

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cerned by the provincial assemblies), the special constituencies outnumber the territorial. Of the 250 seats, 145 are reserved for special groups: the Muhammadans having 82, and ten other castes, races, economic sections having from 4 to 11 representatives.

In the provincial assemblies, the same situation is found. Only in six provinces do the general territorial constituencies constitute a majority of members.[39] No province is free from restrictions for the Muhammadans—the only ones so favored—who possess clear majorities in the North West Frontier and Sind and near-majorities in Bengal[40] and Punjab.[41] Special representation is provided for "untouchables" in all provinces but the North West Frontier and Sind, for "backward tribes" in six provinces, for Sikhs in two, Anglo-Indians in 7, Europeans in 9, Indian Christians in 8, Mahrattas in 1 (Bombay). Reserved seats are also provided in all but one province (Assam) for industry, landholders, labor; and for universities in all but 4. A small number of seats (1 to 7 per province) are allotted to women, of which 1 to 3 may be designated for Sikh, Muhammadan, Anglo-Indian, or Indian Christian women. It can well be understood that with such a complex system the Act, though prodigiously detailed, is not definitive, and a committee is now at work filling in the gaps left by the measure, delimiting the constituencies, and clearing up the numerous incoherencies.

Responsible Government and Safeguards. By far the most important parts of the Act, so far as Indian nationalism is concerned, are those which regulate the relations of executive and legislature. Responsible government, i.e., cabinet government, requires that governors as nominal heads shall choose their advisers in accordance with the prevailing party complexion of the legislature. Under the 1919 act, no such procedure was contemplated in the central government. In the provinces, however, under the system of "dyarchy," some ministries (handling "transferred" subjects) were more or less completely dependent on the native parliamentary ministers. But in practice dyarchy produced administrative disunion and legislative hostility. "As long as dyarchy continued," reported the Simon Commission,[42] "it is inevitable that the elected members of the legislature should tend to show an exaggerated hostility to the work of the reserved half of the government, which they may criticize but cannot control." Accordingly, it has been well understood that the purpose of the new act is to abolish dyarchy completely and establish in its place full responsibility of all ministries—with certain guarantees against misgovernment.

[39] Madras, 146 out of 215; Bombay, 107 of 175; United Provinces, 140 of 228; Bihar, 86 of 152; Central Provinces, 84 of 162; and Orissa, 44 of 60.

[40] 117 of 250. [41] 84 of 175.

[42] *Recommendations*, p. 32.

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In both federal and provincial governments, the administration is to be conducted by a cabinet dependent upon the legislature. "There shall be a council of ministers, not exceeding 10 in number, to aid and advise the governor-general in the exercise of his function."[43] These ministers must be members of the legislature, and are to be summoned and dismissed at the pleasure of the chief executive[44]—the customary mode of concealing parliamentary supremacy in the British constitutions.

Everything will depend, of course, upon the manner in which the governor-general and the governors conduct their relations with the cabinets (over which they may preside) and with the legislatures. It was for this reason that the Secretary of State for India was required[45] to lay before Parliament the draft of instructions to be issued to executives, for it will be recalled that responsible government was introduced into the first British colonies by changes in the instructions. Accordingly, tentative drafts of instructions were published immediately after the second reading of the bill in February, 1935.[46] By these instructions, the governor-general is to exercise his trust to further the partnership of India and the United Kingdom "to the end that India may attain its due place among our dominions." More particularly, the governor-general (or the governors), in appointing ministers, should "consult with the person who, in his judgment, is most likely to command a stable majority in the legislature" and is to bear in mind the "need for fostering a sense of joint responsibility among his ministers."

Nevertheless, the establishment of responsible government in both the federation and the provinces has not been without serious limitations. Those doubting the ability of the Indian politicians to conduct the administration with any degree of success and those anxious to protect English vested interests have joined in creating three major checks on Indian freedom: discretionary powers of the chief executive, extraordinary powers of the executive, and restrictions on the legislature and on the administration.

The special discretionary powers of the governor-general relate to defense and to external and ecclesiastical affairs. For advice on these matters, he may appoint three councilors.[47] In addition, there are laid on him eight special responsibilities—the famous "safeguards" which were debated at great length in Parliament. The subjects upon which the governor-general has special duties are as follows: a grave menace to the peace and financial stability, minorities, discrimination against English civil servants, trade discrimination, and the rights of the native

[43] Sec. 9 (1).
[44] Sec. 10.
[45] Secs. 13 and 53.
[46] Cmd. 4805.
[47] Sec. 11. Is this surreptitiously introducing "dyarchy" at the center?

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rulers.[48] The responsibility of the chief executive is to be effected by the use of the veto of objectionable bills,[49] through the control of legislative procedure,[50] and through the power of "certification."[51] The latter is unquestionably the most important. It was introduced in 1919 when "official" majorities were abandoned, for it was then foreseen that the executive might need to make laws by "certifying" an act rejected by the legislature as "essential for the discharge of his responsibility." This power, it must be observed, also extends to financial measures, for when a grant of money is rejected or reduced in amount the governor-general may certify the amount asked if "in his opinion the refusal or reduction would affect the discharge of any of his special responsibilities." Certification has, in fact, rarely been resorted to, and the most noteworthy cases have been for the suppression of sedition. As recently as September, 1935, the governor-general used it to put into operation the Criminal Law Amendment Act which had been rejected by 71 to 61 in the Assembly. Whether or not this power will be exercised in future depends upon the course of political events. In the draft of instructions already published, the governor-general is ordered so to act as "not to enable his ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own."

These discretionary powers of the governor-general and governors are to be exercised in the ordinary course of government when necessary. The possibility of an absolute collapse of parliamentary government was further anticipated by the provision for "exceptional" powers. "The governor and the governors, as the case may be, must be armed with full powers in the case of a breakdown," reported the Simon Commission.[52] Accordingly, long sections, standing as separate chapters in the Act,[53] contain "provisions in case of a failure of constitutional machinery." When the chief executive is satisfied that a situation has arisen in which the government of the Federation (or of the provinces) cannot be carried on "in accordance with the Act, he may by proclamation take over any functions of the administration as he sees fit"—with the exception of the judicial. Such proclamations shall be effective for six months, or if approved by the British Parliament, for a further twelve months. But after three years of such government the ordinary form of government under the Act is to be resumed, unless Parliament has provided otherwise. The purpose of this part, it has been declared, is not to prevent self-govern-

[48] Sec. 12. A similar list is found in Sec. 52 for the governors.
[49] Sec. 32.
[50] Sec. 38—by banning certain subjects from discussion.
[51] Sec. 44, and 90 for the governors' power.
[52] *Recommendations*, p. 22.
[53] Chap. 5 of Part II for the federal government, and of Part III for the provinces.

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ment, but to preserve India from the consequences of a failure of self-government. But the dangerous feature is that the operation of this section of the Act comes into effect, not at the instigation of the British Secretary of State for India, nor of the British Parliament, but at the will of the chief executive.

As with other British constitutions, there is no bill of rights in the Government of India Act. There are, however, numerous restrictions on the legislatures—not for the purpose of protecting the Indian people, but for the protection of British interests. Legislation respecting the authority of the British Parliament or its statutes, the crown, British nationality, the Army Act, and leave to appeal to England, etc., is definitely forbidden.[54] Moreover, there are lists of subjects[55] upon which bills cannot be introduced without previous consent of the governor-general and governor, e.g., police, criminal proceedings in which Englishmen are concerned, taxation discrimination against non-resident persons or property owners. Discrimination against United Kingdom residents is particularly prevented as to entry into India,[56] taxation, shipping, and the professions. On the administrative side, it may be recorded that a long portion of the Act,[57] dealing with the services of the crown, reserves to the Secretary of State for India the continued privilege of making appointments to the army, civil service, and police services, and determining their conditions of pay while yet retaining them on the federal budget. Other administrative officials, however, are left to the Indian governments, provision being made for civil service commissions. Special provision is made for protecting those already in the higher posts against the adverse result of legislative abolition of the offices. One of the most amazing sections for the benefit of British officialdom[58] is that relieving officials from civil and criminal proceedings for acts "done or purporting to be done" in the execution of duty— unless the governor-general decides otherwise. A similar protection extends[59] to all actions or omissions of governors-general or governors, personally or otherwise, unless otherwise decided by the king in council.

Conclusion. Reference has already been made to the enormous area and varied population over which the new government is to function. But even more significant than the quantitative aspect is the qualitative importance of the Act. This constitution may mark a definite advance in the relations of Great Britain to the Eastern races. At a time when economic nationalism and its concomitant imperialism is spreading to

[54] Sec. 110. [55] Sec. 108.

[56] Sec. 111, though the government may exclude those inciting to violence or overthrow of government; it will be noted that the residents of other dominions are not so protected. [57] Part X. [58] Sec. 270.

[59] By Sec. 306, inserted by the House of Lords.

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Oriental peoples, Britain is widening the foundations of the Commonwealth in such a manner as to make it possible for the richest, most populous, and most glamorous part of the Empire to be taken into partnership.

It is true that this is not the way in which Indian opinion greets the Act—and the verdict of the Indian population is all-important, since it is the judgment of those who have to work the new constitution. All parties are resentful and hostile in view of the very considerable limitations upon absolute self-government. But consideration of the possibilities of future development which a liberal interpretation holds out is gradually changing this hostility into acceptance of the benefits which can be obtained. A considerable number of the Congress leaders (including Gandhi, who has since retired from politics) announced their candidacy for election, and in consequence the more extreme groups have been forced to acquiesce also. Whether the Congress party will undertake to form ministries if in a majority is still being debated, though many of the leaders have indicated their willingness to do so.

The Act is heavily weighted against radicalism and democracy. The influence of the princes and of the states' representatives, indirect election of the federal assembly, the property qualifications for suffrage, and the large place given to communal representation are obvious evils. It remains a constant criticism that the constitution has not definitely accorded dominion status, that it was English-made and is thrust upon the people of British India while the princes are suffered to make their own terms. And, finally, the safeguards for British economic interests, for British officialdom, and the limitations on full parliamentary control are defects which cannot be overlooked. But there is hope for the future in the fact that this Act is the product of a predominantly Conservative government in Britain. What Indians have now got is thus but the minimum of what they may expect with more liberal supervision of other parties. It has been officially admitted from the Conservative front bench in the House of Commons that British officials are no longer regarded by the Indian masses as the embodiment of all political wisdom. And it was significant that the Attorney-General, Sir T. Inskip, remarked in this connection that it must be "regarded as a compliment paid to us if we had taught the people of India to honor the men of their own race as we honored our own race." There is thus every prospect that Indian government may become whatever Indians themselves care to make of it.

H. McD. Clokie.

Stanford University.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

In the preliminary program of the Chicago meeting of the American Political Science Association as distributed to members in November, there was an inadvertent omission of a joint luncheon with the American Labor Legislation Association on December 20 to be addressed by Dean Lloyd K. Garrison, of the University of Wisconsin, and others.

Professor Manley O. Hudson, of the Harvard Law School, was on October 8 elected to the World Court bench to fill one of the vacancies caused by the resignation of Frank B. Kellogg, former Secretary of State of the United States, and the death of Dr. Walter Schucking of Germany. He received forty-eight of the fifty-three votes in the Assembly.

Professor Frederick S. Dunn, of Yale University, and at one time lecturer on international law at Johns Hopkins University, will be visiting professor of international relations at Columbia University during the coming winter session.

Professor Charles G. Haines, of the University of California at Los Angeles, while on leave of absence in 1936–37, is teaching during the first half-year in the department of government at Harvard University and during the second half-year will carry on research and writing at the Harvard Law School.

The members of the faculty of law at the University of Lyons are planning three volumes of essays in honor of Professor Edouard Lambert, director of the Institute of Comparative Law, who is retiring after forty years of service as a teacher at the University.

Dr. Benjamin E. Lippincott, assistant professor of political science at the University of Minnesota, will return from a year's travel and study in Europe to take up his duties at the University in the winter quarter.

Beginning February 18, Dr. Salvador de Madariaga will deliver a series of five lectures at Swarthmore College on "The Theory and Practice of International Relations."

Miss Louise Overacker will be on leave from Wellesley College during the second semester and plans to spend a portion of the time in Washington.

Dr. Charles B Fahs, who has spent the last three years studying the Japanese language and Japanese politics and government in Paris, Kyoto,

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and Tokyo under a fellowship from the General Education Board, has been appointed instructor in Oriental affairs at Pomona College.

Dr. Charles J. Rohr, who during the summer was administrative assistant to the director of the emergency education program of the Works Progress Administration in Connecticut, is serving this year as acting assistant professor of history and government at the University of Maine during the absence of Professor Edward F. Dow.

Dr. H. Schuyler Foster, Jr., who has been on leave of absence as tutor and research associate at Harvard University, has returned to Ohio State University and has been promoted to an assistant professorship.

Dr. Albert J. Schwieger, formerly an instructor in economics at the University of North Dakota and more recently at the Worcester Polytechnic Institute, has been appointed assistant professor of economics and government in the latter institution.

Dr. F. R. Aumann, of the department of political science at Ohio State University, spent the spring and summer quarters in Washington, D. C.

Professor Charles H. Titus is on leave from the University of California at Los Angeles during the first semester. He taught at Berkeley during the summer.

In the department of political science at Stanford University, the following appointments have been made for the academic year 1936–37: instructor, Hilden R. Gibson, Victoria Schuck, and A. Bruce Wright; acting instructor, Walter T. Bogart.

Dr. Clifford E. Garwick, instructor at Ohio State University last year, is now holding an assistant professorship at the University of West Virginia.

Mr. Joseph A. Kitchin has been appointed a teaching fellow in political science at the University of Michigan.

While on leave this year from the University of Maine, Professor Edward F. Dow is studying various phases of public administration in Washington.

Dr. Robert Harris, formerly of the University of Cincinnati, is now a member of the political science department at Lousiana State University.

Dr. Franklin L. Burdette, formerly of the University of North Carolina, is now teaching at Princeton University.

The Women's Organization for National Prohibition Reform has established at Barnard College a fellowship paying $1,400 and open to graduate students in government, history, economics, and related fields.

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Dr. Paul K. Walp has been appointed head of the political science department at Marshall College. He succeeds Dr. Thomas C. Donnelly, who was on leave of absence as professor of political science at the University of New Mexico last year, and who has accepted reappointment there. Dr. Conley H. Dillon has been promoted from instructor to assistant professor of political science, and Dr. A. E. Harris, formerly a graduate student at the University of Iowa, has been appointed to an instructorship. Plans are under way for a bureau of government research.

A bureau of government research was established recently at Louisiana State University as a part of the department of government. Professor R. L. Carleton is acting head of the department and director of the bureau. The bureau's activities are subject to general control by the members of the department, who constitute a board of directors.

The fifty-sixth annual meeting of the Academy of Political Science, held in New York on November 12, was devoted to the general subject of transportation development in the United States.

Dr. Frank W. Notestein has been appointed a lecturer in the School of Public and International Affairs at Princeton University, and will carry on research and teaching in population problems. The appointment has been made possible by a donation from the Milbank Memorial Fund, with which Dr. Notestein has been associated for some years. Dr. Robert K. Reischauer, who was appointed a lecturer in the School last year in consequence of a donation by the Rockefeller Foundation, has been made an instructor in the department of Oriental languages and literatures and in addition to continuing his work in the department of politics is this year giving a senior course in Japanese language and a one-term graduate course in Japanese culture.

Seventy-four traffic policemen, divided about equally between ranking officers and patrolmen, completed a two-weeks course of study at the Fourth Annual Traffic Officers' Training School held at Northwestern University October 12 to 24. The men represented forty-six cities in twenty-three states. Fifty-nine attended the basic course and fifteen the advanced course which was conducted for men who had previously taken the basic course and had been invited to carry further their study of traffic control and accident prevention. The Northwestern University Traffic Safety Institute, which had charge of these courses, conducted similar courses for county and state police from November 9 to 21.

Under its new program of training in public administration, the University of Minnesota has appointed for the year 1936–37 six pre-service fellows and five in-service fellows. Those awarded pre-service fellowships

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are: Robert C. Bast, Northwestern University; Alice Hardenbergh, Bryn Mawr College; Howard T. Heun, University of Wisconsin; Gunnar G. Mykland, University of Kansas; Leonard F. C. Reichle, University of Chicago; and Albert H. Rosenthal, University of Colorado. Those appointed to in-service fellowships are: Ann M. Connoy, director's office, Minnesota State Employment Service, St. Paul; Carl W. Frank, city engineer, New Ulm, Minnesota; William H. Sherman, city accountant, Albert Lea, Minnesota; Arthur W. Smith, statistical clerk and assistant examiner, Civil Service Bureau, St. Paul; and Chesley L. Sweney, associate accountant and auditor, St. Paul office, Interstate Commerce Commission.

At the University of Virginia, Dr. Rowland Egger, director of the Bureau of Public Administration, has been advanced to a full professorship in the school of political science. He recently returned to the University after sixteen months' leave of absence, during which time he served as secretary of the Joint Committee on Planning and Coöperation of the International Institute of Administrative Sciences and the International Union of Local Authorities. Dr. Raymond Uhl, formerly secretary of the Bureau and acting director in the absence of Dr. Egger, has been made assistant director of the Bureau and assistant professor of political science. Mr. Anthony Vincent Shea, formerly staff member of the Virginia Commission on County Government, has been appointed statistician and accountant on the staff of the Bureau, with the rank of instructor in the school of political science.

An Institute of Public and Social Administration has been set up at the University of Michigan for the purpose of correlating existing offerings in these fields and providing a definite curriculum for graduate students desiring work in public and social administration. Dr. George C. S. Benson, formerly of the Council of State Governments, has become associate professor of public administration in the Institute, and Miss Eleanor Goltz has become associate professor of social work. Dr. William Haber, formerly of Michigan State College, and emergency relief director for the state of Michigan, has become professor of economics in the Institute. This recent creation of the Institute follows earlier developments at the University aimed at providing training for the public service. The first "school of political science" was set up in 1881, and in 1914 the curriculum was expanded to train men and women for municipal service. The Institute is an integral part of the Graduate School, and the various phases of the curriculum are in charge of special committees.

A bibliography and union holding list of county official publications now being prepared by James G. Hodgson, librarian of Colorado State

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College, at Fort Collins, Colorado, should prove a valuable aid in the study of county government. The list is an outgrowth of a collecting trip made by Mr. Hodgson in 1934 and 1935 for the University of Chicago Libraries, in which he visited all of the states of the United States and all but two of the provinces of Canada, collecting state and local government publications. A preliminary report on the condition of county official publications in the United States was made before the public documents committee of the American Library Association at the meeting of last May in Richmond, Virginia. The list under preparation is an expansion of the material noted in that report. Libraries or individuals who have good collections of official county publications (printed or in mimeographed form) and wish to have their holdings listed in the final work are requested to correspond with Mr. Hodgson. Because of the few good collections of county materials in the United States, he desires to list even collections of single counties when such collections are available to scholars.

The Graduate Institute of International Studies in Geneva. Several months spent as a guest of the Graduate Institute of International Studies in Geneva have given me certain impressions which might be of interest to some of my American colleagues, and I venture to transmit them in this form.

The Institute was established in 1927 with the financial support of the Swiss Confederation, the Republic and Canton of Geneva, and the Rockefeller Foundation. It is in intimate relation with the University of Geneva, some of its professors serving also in the University. In the main, however, it is autonomous and independent, functioning under an executive council of five members, of whom two are not Swiss. Its co-directors, Professor William E. Rappard (Swiss) and Professor Paul Mantoux (French), are both scholars of eminent attainments who have played, and are playing, conspicuous rôles in current international affairs. The permanent faculty of some eleven men, including the directors, is a strong integrated group containing men with wide reputations, drawn from eight countries.

The work of the Institute is confined to the broad field of international relations, with emphasis on contemporary relations. It aspires to be "a center for the study of contemporary international questions," in their political, juridical, economic, and social aspects. To this end, its faculty has been selected with admirable discrimination. Its activities are centered in an adequate building, near but not the property of the University.

The Institute now has about 80 students, of whom 29 are German, 15 American, 9 Swiss, 7 Polish, 3 British, and 3 Chinese; 12 other nationalities are represented by one or more students. All of the students seem

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to handle the two languages of the Institute, English and French, but with varying ease. Most of them devote all of their time to the work of the Institute. The prerequisite of completed study seems to be strictly applied, and hence the students have sufficient maturity to assure the seriousness of their interest.

An American observer is struck by the degree of freedom left to the student. His work is not regimented into courses and seminars, but he is free to attend these exercises, of which each professor conducts at least two each week. Emphasis is placed, not on a student's attending lectures, but on his own independent work. The latter may be directed toward a seminar report, or toward a dissertation to be presented for a degree; in either case, the student works in close contact with a professor. Yet he does so without any necessity of making a grade, for there are no "marks" and no "credit" is given for "courses." My own observation has been that attendance at the lectures, which are indeed lectures and not colloquies, and at the seminars, does not suffer in consequence, either in frequency or in the manifestation of interest. Following a European practice, few of the professors work in the Institute building, and perhaps their consultations with students are not as frequent as they might otherwise be.

In addition to the exercises conducted by the permanent faculty, students have the opportunity of hearing numerous special lecturers invited from other places. In five months of 1936, nine such lecturers visited the Institute; four came from France, two from Great Britain, one from Austria, one from Belgium, and one from the Netherlands. The uniform procedure for these lectures is of interest. Each lecturer remains for a whole week, lecturing on each of five evenings from 6 to 7 o'clock. On Friday evening, the students invite the lecturer to dinner, after which they discuss his theses and pose their questions. The plan works admirably; the lecturers are well-chosen and paid adequate honoraria; interest among the students prompts their regular attendance; and some of the lecturers attract large audiences in addition to the Institute students. In some cases, the special lectures are published by the Institute.

The library of the Institute contains about 8,000 well-selected volumes. It is not open for long hours, and the students depend very largely upon other libraries in Geneva—those at the University, at the Secretariat of the League of Nations, and at the International Labor Office. More attention might be given to supplying students of the Institute, at their own library, with current international documents in French and English; its library makes no effort to supply the English versions even of League of Nations documents. Nor is sufficient attention given to current day-to-day documents, such as are available to students in many American libraries. While Geneva is in many ways a convenient place for the work

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of a scholar in the field of international affairs, its various libraries taken together are by no means what they should be for this purpose. Improvement is to be expected, however, with the opening of the new League of Nations library.

The Institute as such issues only a diploma upon the completion of a satisfactory course of study and the presentation of an approved dissertation; but two degrees are conferred by the University for work done in the Institute—a *licence ès sciences politiques* (*mention études internationales*), and a *doctorat ès sciences politiques*. Three years of study at the University and at the Institute are normally required for the *licence*, and at least one year of study at the Institute is required for the doctorate. For the *licence*, written and oral examinations must be passed, in subjects rather than in courses. For the doctorate, if a student does not possess the *licence*, he must pass two oral examinations before he is allowed to print his thesis. The printing must be done at the student's own expense, but only after the thesis has been read by a jury of professors and after permission to print has been obtained. Some time after the submission of the printed thesis, the student must defend it orally before a jury of five professors. This *soutenance* is conducted at a public session, which is usually attended by a score or more of the candidate's friends. Having sat on a number of these juries, I can testify to their thoroughness. At such an advanced stage, however, the student is rarely unsuccessful. I have no doubt that while the compulsory printing places a big burden on the student, it protects both him and the professors who pass upon his work against slipshod performance.

The printed theses constitute a contribution to scientific literature of which the Institute may well be proud. A recent thesis by an American student, Mr. O. E. Benson's "Vatican Diplomatic Practice," may be signalized as an example. I was recently delighted to find a valuable thesis on a subject of special interest to me, which had been presented by a student for his doctorate. This led me to inquire about the author, a Rumanian, and I learned that because of his activities as a Communist he had been expelled from Switzerland after his printed thesis had been presented but before he had been given opportunity to defend it. He received special permission to return to Switzerland for three hours only, in order to make his defense. Thereafter he was awarded a prize for his thesis, although in exile. The incident bespeaks a toleration which might well be practiced elsewhere.

I have been interested in the Institute since the first discussions of plans for creating it. Only recently, however, have I had opportunity to observe its functioning and to appraise its achievement. I think it is meeting the aims of its founders in an admirable way and serving a most necessary function. Its teaching is free, its standards are high, its training

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is thorough. It has developed an enviable *esprit de corps* among both faculty and students. Most of the students seem to profit from their varied associations in this center of international life, although perhaps more opportunities for international contacts could be given to them in Geneva.

The methods of the Institute are of special interest to one whose life has been spent in American universities. While all of them might not be suited for our mass production, some of them could well be copied in America. For students who seek to find their profession in international law, the Institute, even with its many advantages, cannot replace a well-equipped law school, but I think one need have no reservations in recommending it to advanced students who wish to make a serious study of international relations.

MANLEY O. HUDSON.

Harvard Law School.

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Politics: Who Gets What, When, How. By Harold D. Lasswell. (New York: Whittlesey House. 1936. Pp. ix, 264.)

Political science has long been endangered by the divagation of faddists and reformers who have sought, often with success, to enlist its support in behalf of their supposed needs. The resulting diversions of time and energy by students of political science to light and transient causes have not been good for the subject. A quarter of a century ago, with the rise of bureaus of municipal research, political science was called upon to rescue our cities from the depths of graft and corruption into which they had fallen. Throughout the United States, departments of political science were obliged to offer courses upon so many phases of city government that their programs became wholly unbalanced.

Following the World War, international affairs demanded and received the major attention of students of political science. With abundant funds from foundations, fellowships and subventions for the study of international affairs sent young men and women on hurried trips to all parts of the world to glean what knowledge they could obtain before applying for teaching positions in our colleges and universities. We are wiser now; we know that foreign policy is merely an offshoot from domestic policy, which can be mastered only by one who delves into the history and culture of a country whose politics he would interpret. The study of international relations in the future will be a mosaic built from the contributions of specialists each one of whom has confined his attention to the life and institutions of a particular country or region of the world. There will be no place for the teacher of international relations who surveys world politics by reading the propaganda put out by foreign offices or for him who has stood briefly on the shores of the Lake of Geneva and pondered the League of Nations.

In our own day, political science is threatened by what is called training for the public service. Noisy fellows with brief cases in hand dash around seeking to draw the cloak of political science about that which still remains the business of technicians. Nobody will deny that the study of political science is helpful to men in the public service, but it is quite another matter to pervert the subject to the needs of a scheme of vocational training. Ten years hence, it may be decided that specialized training for the public service is undesirable, or, what is more probable, the government will provide the necessary vocational training for its employees. Meanwhile, a company of scholars which is at once the power and the glory of a university will have suffered by the inclusion of these vocationalists.

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Across the morass of vocational training for the public service into which political science appears to be sinking, the writings of Professor Lasswell seem to portend a blacker night of despair. Following in the wake of his *World Politics and Personal Insecurity*, his *Politics: Who Gets What, When, How* applies his distinctive method of dealing with political data to the elucidation of some very practical problems. Political science, according to his interpretation, is not to devote itself to "the taxonomy of institutional practice," but "is the study of influence and the influential." But the influential are not to be defined in the terms of John Adams as "the rich, the well-born, and the able"—they are not to be described by the use of a single index, but in selected terms, like class, skill, personality, and attitude. In this analysis, government still remains, as Lord Bryce remarked, government by the few, but "it is impossible to locate the few without considering the many. And the emphasis upon the probability that the few will get the most does not imply that the many do not profit from some political changes."

The influential who at any given time wield political power depend in part upon the success with which they manage their environment. That implies a degree of skill in handling symbols, violence, goods, and practices. At the same time, they must withstand the attacks of other groups of the influential who strive for the ascendancy through the use of all the methods at their disposal. In practice, this is likely to mean a struggle for power in which the victory goes to the influential who wield most effectively the symbols of the common destiny. In other words, it is propaganda which furnishes the sinews of war in the battle for political power. Propaganda is therefore the stuff with which political science must deal.

It may readily be admitted that propaganda and the activities of pressure groups belong to the subject of political science. But the subject cannot be resolved into the art of obfuscation. It is not what men say but what they think that in the long run determines how they act. "The existing arrangement of political forces," wrote Figgis, "is dependent at least as much upon ideas as it is upon men's perception of their interests." There is a "long period value" to political science which defies its engorgement by propagandists and their interpreters.

It would be well for students of political science, as they contemplate the work of Professor Lasswell and his school of thought, to bear in mind the fate that has overtaken the study of philosophy. Since the days of Immanuel Kant, philosophers have been so busy with the terminology of their discipline that they have often forgotten to invest their terms with any real content. Kant found philosophy the exercise of gentlemen and left it the battledore and shuttlecock of pedants. Meanwhile, American students should be grateful to Professor Lasswell for making available

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to them the results of a large body of German thought of which they would otherwise probably remain in ignorance.

WILLIAM SEAL CARPENTER.

Princeton University.

The Elements of Modern Politics; An Introduction to Political Science. By FRANCIS GRAHAM WILSON. (New York: McGraw-Hill Book Company, Inc. 1936. Pp. 716.)

This book represents a truly ambitious undertaking. Seven years of reading and writing have gone into it, and, in view of the subject range, much more time might well have been spent. Professor Wilson's treatment is theoretical, but the topics covered are as broad as politics itself.

Part I, "The Approach to Politics," deals with general principles and the problem of method. Part II, "General Principles of the State," discusses the state and its sovereignty, the organization of political authority, and some theories of state obedience. Part III, "Foundations of Democracy," examines democracy as a form of government, democracy as a social philosophy, the nature of public opinion, and some dynamics of public opinion. Part IV, "Functional Principles of Democratic Government," deals with the principles of political participation, the political party in the democratic state, principles of representation, and democracy and administration. Part V, "Democracy and the International Community," covers nationalism and internationalism and the state in an organized world. Part VI, "Citizenship," emphasizes modern citizenship. Part VII, "The Evaluation of the Democratic State," treats the crisis in liberalism, progress, law and morals, the functions of the state, and the challenge of pluralism. Part VIII, "The Authoritarian State," examines the Communist system, the Fascist experiment, German National Socialism, Pragmatic collectivism. Even this detailed outline hardly gives a fair picture of the profusion of topics examined.

In the more technical sense, Professor Wilson is scrupulously accurate and proper, frequently mentioning in footnotes the permission which the copyright owners have given him to quote their publications. Material is drawn from hundreds of books and articles. Few of these are slighted; almost everything, good, bad, and indifferent, is cited or quoted. While the emphasis is placed on modern politics, theories of the state, ancient and medieval, are also noticed.

This book is irenic. Little, if any, trace of preference or prejudice is to be found in the entire work, and this is no small achievement in the discussion of issues and subjects where individual bias so often determines or destroys judgment. Professor Wilson may have a doctrinal axe to grind, but the reviewer has been unable to discover it. All of which may be put to his credit; and yet one doubts whether the book was worth doing.

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A volume of this sort might conceivably be of value to any one of three groups of readers: advanced students of politics, general readers, and undergraduates. As for advanced students, they have doubtless read and digested much of the material here presented, and made their own notes in their own way. I, for one, feel that they ought to have the pleasure and profit that come from doing such work for themselves. As for the general reader, he will be impressed with all these pages, many broken with quotations and burdened with footnotes, with an array of ideas and concepts both numerous and bewildering, shading off into similar ideas and theories and into others conflicting and contradictory. It is doubtful whether he would get beyond the first few pages. Professor Wilson has neither the advanced student nor the general reader particularly in mind. Rather, his purpose is "to introduce the student to the methods of political study, to the fundamental problems which are ever present in the philosophy of the state, to the problems which are the chief distress of democracy, and to show briefly, on occasion, how ideas on these subjects have developed." Written primarily as a text-book for undergraduate courses, the volume should be judged on the manner in which it meets undergraduate requirements. Whether or not it meets this test will turn upon the instructional methods of individual teachers.

Being strongly opposed to text-book study of politics, especially political theory, the reviewer feels that Professor Wilson's book, good though it is as text-books go, will not serve the purposes he had in mind in writing it. William James stated the case against the text-book teaching of philosophy years ago when he characterized it as a snare and a delusion, standing in the way of acquaintance with the great thinker. Such contact cannot be as intimate as it should be, even where lengthy selections are taken from their context and brought together in a book of readings, but it is better than a text-book. I am convinced that mastery of the thought of a single philosopher, say Thomas Hobbes, would be more profitable, giving the student deeper insight into the nature of politics and its problems, than reading even a "good" text-book. It would do better, in part, what Professor Wilson undertakes in this book, i.e., to "introduce the student to the fundamental problems which are ever present in the philosophy of the state," and it would also save the undergraduate from the misleading, confusing, and often deadly text-book reading.

But Professor Wilson's book is open to criticism even by one who believes in text-book instruction. The author's method is essentially that of letting the ideas speak for themselves. "Our purpose," Professor Wilson writes, "is not to survey the history of political theory; rather it is to consider some of the basic problems of our own generation." The history of ideas and the environment in which they flourished is, therefore, treated inadequately, or not at all, with the result that they lose their

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meaning and significance. There is grave doubt as to whether the basic problems and ideas of any generation, including our own, can be studied effectively unless they are related to history and environment. If this is not done, both ideas and problems tend to evade the category of time so essential for their understanding. Discussion of the thought of men so widely separated in point of time as Plato and Duguit, without more consideration of the conditions and circumstances under which they lived and wrote, is calculated to be highly misleading, most of all to the undergraduate.

Books of this sort were in fashion at the end of the last century when politics began to be introduced into the curriculum of a liberal education. They may have been, no doubt were, helpful then; but, in the opinion of the reviewer, they are now outmoded and obsolete. W. A. Dunning's monumental *History of Political Theories* is, I believe, less highly regarded today than when it appeared years ago. It was an enriching experience to digest and interpret the original texts necessary to prepare such a work, but for the rest of us the service is, I think, less than is sometimes supposed. As for works such as Woodrow Wilson's *State*, they are likely to provoke, in the minds of students habituated to look at the facts of politics realistically, reactions not unlike those accompanying bad dreams.

In our generation, new techniques have been introduced to answer new demands. There is naturally some disagreement as to the proper method to be employed in dealing with modern political phenomena, but it is generally agreed, I think, that the student of politics worth his salt must bring precise and accurate knowledge, discriminating judgment and appraisal, to bear on particular problems. This is impossible when ideas and concepts are taken out of their setting and presented, on a wholesale scale, *in vacuo*. For this reason, it seems too bad that so much time and effort should have been given to so cosmographic a work as this. Personally, I feel that a condensed distillation resulting from more thinking, and perhaps somewhat less reading and writing, would have been more satisfactory for undergraduate, teacher, scholar, and citizen than this exhaustive survey dealing so largely with the ideas of others. Professor Harold D. Lasswell has recently made such a contribution in his little book, *Politics: Who Gets What, When, How*, in which, by the way, he characterizes works such as this as "devoted to the taxonomy of institutional practice, with little reference to the living forms which are thereby helped or hurt."

But I do not wish to end on so critical a note. Professor Wilson has read widely; he has carefully organized and skillfully selected his material. He has laid for himself the groundwork for the kind of book that we have reason to believe he can write. One hopes that its appearance will not be long delayed.

Princeton University. ALPHEUS THOMAS MASON.

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Constitutional Law of the United States. By Hugh Evander Willis. (Bloomington, Ind.: The Principia Press. 1936. Pp. viii, 1198.)

Through articles in various law journals, Professor Willis, of the University of Indiana, has an established reputation in the field of constitutional law. The present volume will add to this reputation, and constitutes a valuable addition to the literature of the subject. The work is rendered more interesting by the fact that the author does not confine himself to a purely legal discussion, but often expresses his own economic and political views. For example, Chapter XXXI on "Capitalism, the United States Constitution, and the Supreme Court" is largely devoted to the author's opinions.

The author's preface says that the volume "makes a great deal of use of political science, economics, sociology, and history, but these other subjects are introduced into this text for the help which they will give to a correct understanding of legal principles." Perhaps it may be said that the author sometimes uses his own views as the basis for conclusions with which others may not agree. This applies to history as well as to economics. We find, for example, frequent references to the establishment of the doctrine of a dual form of government by John Marshall (e.g., pp. 10, 75, 83); and John Marshall is given full credit, not only for the establishment of the dual form of government, but also for the establishment of "the doctrine of the supremacy of the Supreme Court." Yet, the interest of the volume is increased by the author's expression of his own views, even though one may not always agree with either his history or his economics. For example, the student will be interested in and aided by the short "history of money" which appears in Chapter XII dealing with the taxing and money powers of Congress.

The volume does not add, and was not intended to add, greatly to our knowledge of constitutional law, but it is a stimulating contribution to the literature of the subject. One need not agree with all opinions expressed by the author, but his opinions are sufficiently distinguished from his statements of the law, and the author properly expresses his own views upon numerous issues with respect to which we cannot be said to have established rules. Upon many topics, the author's discussion is stimulating and well worth consideration by lawyers who would normally not expect to have their knowledge increased or their point of view altered by a single-volume treatise. Well worth reading is the discussion at pp. 240–245 of the influence of the United States Supreme Court in the expansion of national power.

The volume is well printed and is made more useful by a table of authorities, a table of cases, and an adequate index. Full references are made in the text to cases and law journal articles, but the author appears

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not to be acquainted with Sidney Ratner's "Was the Supreme Court Packed by President Grant?," 50 *Political Science Quarterly*, 343 (1935).

WALTER F. DODD.

Chicago, Illinois.

The Commerce Power versus States' Rights. By EDWARD S. CORWIN. (Princeton: The Princeton University Press. 1936. Pp. 276.)

This is a refreshing volume of opinion and argument in the field of constitutional history and law. It represents the learning and nationalistic view of one of the most acute of our constitutional historians and applies the method of John Marshall to the commerce clause. This reviewer is in hearty accord with the thesis of the book, and it should be added that whether one likes the book or not depends pretty much on whether one agrees with the thesis.

This thesis can best be stated by quoting the book itself. Speaking of Gibbons v. Ogden, Professor Corwin makes the following summary: "To sum up: Marshall in this opinion pictures Congress's powers to regulate commerce among the states as the power to govern commercial intercourse among them; and this power he characterizes as 'sovereign,' 'complete,' 'plenary,' 'absolute,' and of the same scope as it would be were it vested 'in a single government.' It is, in other words, unaffected by the coëxistence of the states, and their powers. Finally, Congress's discretion in the exercise of this power, that is to say, in the selection of the purposes to be realized by its exercise, is limited only by that body's political responsibility. The power is not in this aspect subject to judicial review.

"And with this conception of the commercial power, Marshall's conception of state power was at all points harmonious. The states were conceded to have retained 'an immense mass of legislation,' including the power to govern their 'completely internal commerce.' But all state powers were conceived as subject to three important qualifications. In the first place, while national power is designed to extend 'to all the external concerns of the nation, and to those internal concerns which affect the states generally,' the field of state power comprises only those internal concerns which are completely within a particular state and 'do not affect other states.' In the second place, however, even such completely internal concerns of a state may be interfered with by national power when such interference is necessary 'for the purpose of executing some of the general powers of the government.' Thirdly, no matter by what power it may have been enacted, any state law which conflicts with an otherwise constitutional act of Congress must yield to the latter.

"The third is the point of controlling importance. It asserts that when the supremacy clause is given its due operation, no subject-matter whatever is withdrawn from the control of the delegated powers of the United

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States by the fact alone that the same subject-matter also lies within the jurisdiction of the reserved powers of the states; for when national and state power, correctly defined in all other respects, come into conflict in consequence of attempting to govern simultaneously the same subject-matter, the former has always the right of way."

Contrasting the view of Marshall, as summarized above, with that of the majority opinion in Hammer v. Dagenhart, Professor Corwin says that the doctrinal position of the later view can be summarized in six propositions: "(1) that the framers of the Constitution conferred upon Congress the power to regulate commerce among the states with a different intent than the power to regulate foreign commerce, with the result that the former power is of less scope than the latter power; (2) that the power to regulate commerce among the states does not include the power to prohibit it; (3) that while Congress has power to restrain commerce among the states for the benefit of such commerce, this power is not available for the promotion of the general welfare in other respects; (4) that the reserved powers of the states constitute a limitation upon Congress's power to regulate commerce among the states and serve to withdraw certain matters from the jurisdiction of the latter power; (5) that production is a subject which is segregated to the reserved powers of the states, and so lies outside the range of Congress's power to regulate commerce among the states; and (6) that Congress's purpose in enacting a measure is a judicially enforcable test of the validity of such measure if it invades the ordinary domain of the states."

"Proposition (3), it should be added, is a post-Civil War variant of Proposition (2), while Proposition (5) is the form in which Proposition (4) is currently important. The ensuing chapters will set forth, mainly by means of quotations from judicial opinions, arguments of counsel, and authoritative writers, the record of discussion on each of these propositions, interlarding the material given with relevant comments."

A chapter is devoted to each of these propositions. In conclusion, Professor Corwin urges the Supreme Court to return to the view of Marshall and permit Congress to exercise the broad power which the Constitution gives it. Professor Corwin voices his belief that the Court will correct this mistake as he thinks it has corrected numerous others. He thinks, as most historians do, that documentary change is not adequate to the task. The book is addressed to the Court, really, and not to the draftsman or the reviser. It is an argument "within the family," and not the work of an outsider.

One interested in method will miss tables of statistics and elaborate factual analyses in Professor Corwin's book. None of the erring judges is psychoanalyzed. Professor Corwin does not attempt to prove the desirability of his advocacy of national power. But one cannot help feeling

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refreshed when reading the book, because it is frankly a book of argument. It states a point of view and supports it. It is to be hoped that more constitutional writing by scholars will be as bold as their learning justifies.

OLIVER P. FIELD.

University of Minnesota.

The Interstate Commerce Commission; A Study in Administrative Law. Part III, Volume B. By I. L. SHARFMAN. (New York: The Commonwealth Fund. 1936. Pp. xiv, 853.)

This volume on the Interstate Commerce Commission deals with the most important, difficult, and complex problem which the Commission has had to face—that of making rates. The book is divided into two parts, which deal respectively with the rate level and the rate structure.

The problem of regulating the rate level, as Professor Sharfman points out, is concerned with the reasonableness of charges in an absolute sense, rather than with rate relationships. The rate level has special reference to the effect of rates upon the financial status of the carriers. The problem here is mainly one of determining whether too little or too much is being charged for carrying on the transportation function, not primarily in connection with specific services, but in terms of total revenues and aggregate burden.

The Commission has been granted ample power to deal with this problem, since it has now the authority to prescribe both maximum and minimum rates for the future, to suspend proposed changes in rates before they become operative, to initiate proceedings designed to expand or contract railroad revenues without waiting for complaints by shippers or petitions by carriers, to evaluate the properties of carriers and determine the rate of return to be earned thereon, to adjust rate policies for the promotion of adequate transportation service as well as the prevention of unwarranted rate manipulations, and to make apportionments of joint revenues among participating carriers, in the public interest. In the last analysis, the Commission now has power to become the general manager of railway policy in the public interest.

After discussing the emergence of guiding considerations, Professor Sharfman considers in detail the criteria which have been adopted by the Commission for use in arriving at the proper rate level; and he enumerates a very lengthy list of questions which have to be answered. It is on the basis of the common law principle that rates shall be reasonable that the vast structure of economic policy has had to be built up. Professor Sharfman explains, step by step, the circumstances under which the many questions arose, and the manner in which the Commission has attempted to answer them. He also gives a critical summary of the problems and the answers made by the Commission.

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But the complex questions presented to the Commission do not end with the establishing of a rate level. They exist also in respect to the common law doctrine as expressed in the statute that there shall be no discrimination in rates, and also in respect to the establishment of the rate structure of the individual rates and their relationships one with another. The second part of the volume deals with the rate structure and treats both the problem of discrimination and the establishment of the individual rate structure. Here again the questions encountered and the answers given them are reviewed in thorough fashion.

Professor Sharfman points out that a major part of the Commission's activity has been devoted to applying general standards of reasonableness to specific rates. In so doing, it has not attempted to solve the problem *de novo*, but has merely tried to prescribe acceptable charges in lieu of those found to be unlawful, and to adjudicate controversies concerning established relationships. In performing this function, it has attempted to protect the public interest as well as to settle the conflicting private rights of carriers and shippers.

The result of this process as continued through the years has not been the development of any well articulated theories of rate-making. But there has evolved "an aggregate of pertinent factors whose frequently conflicting tenor is resolved by acts of judgment arrived at through processes which it is often impossible to define with clarity and confidence" (p. 419). The Commission has insisted that its function cannot be performed under any nice formulas or mathematical rules; but, on the contrary, that its actions are based upon a "flexible limit of judgment."

The great value of this book consists in the mass of evidence that is presented, for the first time in such detail, concerning the concrete problems that are involved in rate regulation and the way in which they have been solved by the Commission. A careful reading of the volume should convince anyone that the Commission not merely is engaged in the common law process of establishing reasonable and non-discriminating rates, but is also doing the work of public management of one of the most important businesses in the country. It is not dealing primarily with questions of law (although its actions are based on common law maxims and it is controlled by law), but with vast problems of economics, involving the establishment of relationships, the harmonizing of conflicting interests, the establishment of criteria of fairness of business practices, the determination of financial policies, the establishment of significant social and economic arrangements, and the modification of the competitive system.

FREDERICK F. BLACHLY.

The Brookings Institution.

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Judges and Law Reform. By Sam Bass Warner and Henry B. Cabot. Survey of Crime and Criminal Justice in Boston Conducted by the Harvard Law School. Volume IV. (Cambridge, Mass.: Harvard University Press. 1936. Pp. viii, 246.)

This volume, which is far more pretentious than its title would suggest, is a detailed study of the organization and functioning of the criminal courts of our eighth largest city. The high caliber of Professor Warner's former studies in criminal statistics should assure it a ready welcome.

Ninety-seven per cent of all criminal cases are first tried in the district court. Following conviction, and even after sentence has been passed, the defendant may secure a new trial in the superior court by the simple expedient of demanding a jury trial. This lack of finality, the authors find, has demoralized district court procedure and fostered light sentences. The new trial is further complicated by the fact that the defendant's history must be investigated anew by a different set of probation officers, even though the presiding justice may be a judge of the district court temporarily assigned for service in the superior court.

The authors find more basic defects. "The courts have been saddled with . . . a mass of petty offences, to the disposition of which the traditional legal procedure is ill-adapted" (p. 32). It is suggested that some type of administrative procedure might prove more efficacious in caring for those who have imbibed too freely of the fruit of the vine or broken the traffic laws. They also recommend that the power of imposing sentence be taken from the trial judge and vested in a "disposition tribunal," preferably composed of an attorney with judicial experience, a psychiatrist, and a sociologist. There are other recommendations equally challenging to the accepted order of things; for example, that less attention be paid to the wishes of counsel and more consideration be given to the interests of jurors and witnesses. It is even suggested that "the judges should share the uncertainty as to when cases will come on for trial and how long they will last" (p. 155).

The volume takes its title from Chapter I, which should be read together with the two closing chapters. Here the guiding thesis is that lasting improvement can come only through leadership from the bench. Legislative control of court procedure has failed, and is even of doubtful constitutional validity. But where the courts have been given authority to control their own procedure, they have failed to exercise it. The Massachusetts judicial council has proved a disappointment in that it has restricted its activities largely to recommending statutory changes, even "passing the buck" to the legislature on such a simple question as that of furnishing chairs for witnesses. We must start anew with a unified system of courts. The authors join a former president of the state bar association

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in looking forward "to the day when the chief justice will be chief justice of Massachusetts and not merely chief justice of the Supreme Judicial Court" (p. 3).

J. A. C. GRANT.

University of California
at Los Angeles.

Public Finance. By ALFRED G. BUEHLER. (New York: The McGraw-Hill Book Company. 1936. Pp. xix, 632.)

This is an entirely new work by a relatively young writer in this field. He is best known as the author of *General Sales Taxation*, published in 1932, but his latest book is much better organized and more carefully written than the earlier one. It is indeed a very usable college text in which the "author has kept American conditions and problems primarily in mind," and has endeavored to give "more than the usual attention to the social aspects of public finance." A special attempt has been made also to bring the facts up to date, at least to discuss recent developments and measures, though many of the tables and statements end with 1932 and 1933 or earlier data which are more representative of deep depression than of present or normal situations. "Economy" measures forced on the United States Bureau of the Census are partly responsible for this, and also, perhaps, for some citations from less reliable sources.

If one wanted to go into details, he might make numerous minor criticisms and raise various questions. For example, one might ask if an undue proportion of the whole text is not devoted to details, particularly in the chapters on expenditures. Is it best to state very briefly the incidence of each important tax before the student is thoroughly acquainted with the nature and problems of that tax, or is it better to present first a thorough discussion of the most important economic principles determining incidence and later bring out the applications to the several taxes as each is studied? Buehler's discussion of incidence is fuller than that of most texts, but it is not entirely accurate nor entirely successful in its presentation. The adequate and proper discussion of this phase of the subject, especially within the scope of a one- or two-term college text, is an unsolved, if not an insoluble, problem.

Readers may wonder why the author discusses the taxation of forests, but not that of mines and other subjects raising equally important special problems, or why he devotes so little space to the taxation of "unearned increments" and "socially created values"; or why he states that the opposition to sales taxes has lost ground but does not mention the recent decline in the agitation for such taxes nor the decrease in the number of states employing them. One might also raise some question about the author's discussion of expediency as it affects public finance. Every real-

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ist knows the necessary rôle of expediency in all matters of social organization and administration. Does the author advocate balancing the budget every year, in depression and in war, as well as in prosperous times, or is it better to extend the period for balancing in some cases? What are the criteria and what the alternatives?

It seems hardly necessary to continue the questions or to go into more minor matters; hence we may end with one other question. Should such a text present the broad outlines of the outstanding problems and principles clearly, forcefully, dramatically, and leave the details to be filled in by the instructor and the reader, or should he present a full, detailed outline, touching briefly in orthodox fashion on nearly every topic of any importance? The present text follows the latter pattern more nearly than the former, leaving to the inspiring teacher the task of revealing to his students the inner essence of public finance and its real relation to the other parts of social science and to the vast field of human knowledge and life itself.

It is difficult to write much that is new and inspiring that is at the same time accurate and well balanced in a field that is so large and so continuously cultivated as that of public finance, particularly in a moderate-sized volume. The perfect text is an ideal not yet achieved, and varies in the minds of all who try to conceive the ideal. Professor Buehler's book can serve as a good text or outline for an excellent course if the instructor and his students are equal to the occasion. If any one thinks otherwise, he may consider the suggestion of an old English professor who said that Tennyson was too good a poet; Browning was much better to teach because he left so much for the instructor.

ROY G. BLAKEY.

University of Minnesota.

The Lords of Creation. By FREDERICK LEWIS ALLEN. (New York: Harper and Brothers. 1935. Pp. xii, 483.)

Men Who Run America. By ARTHUR D. HOWDEN SMITH. (Indianapolis and New York: The Bobbs-Merrill Company. 1936. Pp. 361.)

Rulers of America. By ANNA ROCHESTER. (New York: The International Publishers. 1936. Pp. 367.)

These books are worthy of attention here, not as pieces of research nor as penetrating interpretations of political phenomena, but rather as glimpses of fields inviting more systematic and objective exploration by students of government. The periphery of political science has been pushed beyond the study of legalisms and the cerebrations of philosophers to the interrelations of social, economic, and political forces and to the study of problems of political personality and group behavior. The books

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here reviewed call attention to further subjects too important in the political process to be long ignored.

The authors of all three volumes, although approaching their materials quite differently, focus attention on the men who manage our industries. Allen, in temperate colors, presents the course of corporate expansion from the nineties into the nineteen-thirties. He has woven his materials together with skill. His attitude is that of the puzzled but not unhopeful liberal. Miss Rochester gives a series of heavily factual chapters stressing the dominance of finance capital over American industry. Her viewpoint is that of an orthodox Marxist and her data are gathered to support this interpretation. Needless to say, she turns up plenty of pertinent evidence. Smith writes character sketches of a selected number of industrialists and financiers. Perhaps the subject-matter itself creates a "success-story" atmosphere, although it would be unfair to imply that the author is entirely uncritical in his handling of these tycoons.

Miss Rochester's book was written to prove a thesis; the other two are intended primarily to attract the general reader. In each book, the struggle for advantage in the business world is disclosed and the internal politics of industry and banking are revealed. These books dramatically present America's moneyed élite and the fact that many of the influences playing upon the interests and activities of society flow from this source. It is equally clear that these men are the product of their age. The assumptions of economic determinism accepted by Miss Rochester contrast with the emphasis placed upon the force of personality in the volumes by Allen and Smith.

The query that remains in the mind of the reader is the relative significance of finance capital for a democratic society. Lords of Creation are the creations of capitalism freely functioning in a democracy. The strength and boldness of these men of action add to the burdens of the philosopher and the politician alike. Captains of industry establish areas of control and build up empires through interlocking directorates. It is evident that influence ramifies from these various centers. Our authors demonstrate that power exists. The intensity of this power, how it is generated, and how it affects the structure and workings of democracy are questions that remain to be answered.

Wealth, each age discovers, presents grave social problems. Mammon will not be shouted down by moral exhortations. Will political pronouncements prove more effective? Our authors, to the extent that they touch upon this problem, come to very different conclusions. The student of politics might well take up the golden tangle in an effort to note its relations to the other influences determining human behavior and to power-units in other fields. The business man should be studied in any inquiry involving the public regulation of business enterprise. Economic

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rulers are as worthy of our attention as political rulers. In these non-academic books, there is stimulus for the imagination of those scholars ready to follow wherever the concept of power may lead and to relate their more systematic findings to the common fund of general knowledge.

E. PENDLETON HERRING.

Harvard University.

Government in the Third Reich. By FRITZ MORSTEIN MARX. (New York: McGraw-Hill Book Company. 1936. Pp. xi, 158.)

To appraise adequately the machinery of government in dictatorial states appears one of the most complex, and at the same time most responsible, tasks of political science. It is a truism that any description emanating from those under the jurisdiction of the dictatorial state necessarily reflects less the factual situation than the appearance which the exponents of the official doctrine find it desirable to present. Thus, "co-ordinated" information bearing the official stamp is relegated to the rank of mere source-material which in itself needs sociological clarification.

Among those who are able to bring the truth to the attention of the world outside of the dictatorial precincts are, in the first place, the correspondents of foreign newpapers in free countries. Without underrating their invaluable services in collecting the fact material, not infrequently they are hampered by the lack of legal training indispensable for grasping the technical implications of involved constitutional documents. In the second place, the exiled scholars from the dictatorial countries present themselves as the most obvious agencies for interpreting what is actually going on in the countries of their former allegiance. Equipped with legal and intellectual training, they are best suited for explaining to the world *extra muros* what is hidden behind the official doctrine *intra muros*, under the condition, however, that they possess the moral strength necessary for divesting themselves from the natural resentment of the émigré-mentality. Professor W. Y. Elliott, in his foreword to Dr. Marx' book, rightly credits the author with the essential qualities for an unbiased investigation of the National Socialist governmental system, and the reviewer fully agrees that Dr. Marx presents in his book a highly accurate, well documented, and objective treatment of his subject.

The book is admirably written, abundant in appropriate formulations, and it achieves what seems almost miraculous to any expert in the subject-matter, that is, a condensation of the vast aspects of the political institutions of Germany into a rather slim volume in which scarcely any one of the burning problems has been overlooked. It is, however, less what the title suggests, i.e., a presentation of the constitutional law of the subject; it is rather more a sociological description of the forces creating and pushing forward the National Socialist Leviathan. This is per-

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haps regrettable, since there is no lack of such descriptions in English, and particularly in view of the fact that Dr. Marx, formerly a distinguished constitutional lawyer of the positivist school of Republican Germany, and, simultaneously, a member of the civil service of the free city of Hamburg, would have been exceptionally qualified to fill this real gap in the literature on National Socialism. After so abundant a variety of political descriptions, we would have welcomed a solid constitutional interpretation of the one-party government operating under the concentration of powers.

In his foreword, Professor Elliott rightly emphasizes the fact that Dr. Marx' book is based largely on the original National Socialist sources; and, indeed, a sagacious selection of statements taken from speeches of the leading personalities, from juridical journals and daily papers, is responsible for what we may call an "authentic" documentation. Yet the patent ambiguities in the ideological foundation of the National Socialist state call for a juxtaposition of the official doctrine and its factual deviations, to the end that the reader may be constantly aware of the inconsistencies of an "absolute" order which boasts of being inaccessible to compromise. To the reviewer, however, it seems that Dr. Marx, in selecting his material mostly from National Socialist sources, suffers somewhat from *les vices de ses vertues*. Here lies, of course, the basic problem of methodological approach in discussing dictatorial governments. Without being noticeably under the influence of the National Socialist official doctrine, Dr. Marx follows, in many respects, too closely the official thought pattern and its stereotyped arguments, and for the ordinary reader, especially the student, the fine vein of irony which permeates the pages is perhaps not a sufficiently effective weapon with which to offset the forceful statements of the official doctrine so seductive and persuasive to the unprotected reader. A system of government such as National Socialism pretends to be, once for all eliminating the "rule of law" type of government under the conception of human liberty, can be appraised only by sharply contrasting the absolute political values to which a considerable section of human beings—even inside of Germany—still subscribes. What appears to the reviewer most disastrous in dictatorial government, namely, the substitution of the arbitrary judgment of right and wrong by a few "select" for the rule of law (*Rechtsstaat*), seems a little too much obscured by Dr. Marx' objectivity. Objectivity can be so well aimed that it hits beside the mark.

Space forbids discussion of all of the points at which the reviewer, on the background of this general reservation, disagrees with the author. A few major observations must suffice. Explanation of the amazing success of National Socialism in gaining the masses mainly by the "humiliations" of the Versailles treaty is one of the common distortions of truth which the

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National Socialist *ex post facto* justification, by relentless repetition, has forced upon the world. To have failed to refute this now universally accepted legend is one of the great omissions of the émigré historians. Between 1919 and 1930, when the first National Socialist propaganda wave swept the country, the average German *Bürger* was scarcely so "Versailles conscious" as the exponents of official doctrine are anxious to proclaim. By no means every German at the breakfast, lunch, and dinner table felt "crushed" and "humiliated" by the Versailles "dictate." One of the lasting merits of the Weimar Republic and its "policy of fulfilment" is that of having rebuilt Germany's economic fabric after the war-depletion, of having restored German credit after the disastrous inflation, and of having regained international status without resorting to the policy of officially scrapping the treaty. Not the foreign policy "complex" of the German citizen made the middle class ripe for Hitlerism, but the annihilation of the properties in mortgages and savings banks after 1923 and the effects of the world crisis after 1929, to which justly must be added the successful operation of capital against labor by subsidizing the anti-trade-union private army or "movement" of Hitler.

Furthermore, in the reviewer's opinion, Dr. Marx, while correctly stressing the importance of a neutral and efficient civil service—which nevertheless was more efficient than neutral—as the pillar of pre-war Prussia, overestimates this factor in respect to southern Germany, where a thorough amalgamation of parliamentary party government with the civil service under a genuinely constitutional monarchy had taken place. In Prussia, the attempt to square popularly uncontrolled monarchy with liberalism came only in the fall of 1918, under the compulsion of military defeat. It is scarcely correct to apply a uniform political or sociological yardstick to pre-war Germany as a whole, and the differences between South and North, more marked even in steam-rolled Germany of today than in this country, may count heavily one day when the haze of homogeneity so justly observed by Dr. Marx is dispelled. Behind the spell cast by the one-party technique there may reappear the traditional cleavages within the population, increased by the pluralistic tendencies so diabolically fostered through the device of professional guilds and estates. Particularly, the forces of the Catholic Church—strongest in defense and less clerical than ethical—should have found more consideration in Dr. Marx' book.

Another fact which seems fundamental in the interpretation of dictatorial government should not be overlooked. Even the subtlest elucidation of the texts of statutes and of judicial decisions and the ablest reading between the lines of official documents do not convey a true picture of how the administration of the laws works in practice. Dr. Marx is fully aware of such handicaps of an outside observer, and he makes judicious

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reservations to his conclusions when commenting on the new legislation. Here, direct information must fill the gaps, and the reviewer may take the liberty of supplementing some of the author's observations.

Owing to the interference of untrained party officials pushed into the *cadres*, arbitrariness in administration has assumed exasperating proportions. Even behind the guarded language of Dr. Marx' statements appears the desperate plight of the officials of regular training in attempting to cope with the political arrogance of their superimposed supervisors. Practicing lawyers—and among them members of the party—tell of the daily fight for a modicum of impartial justice before the lower courts entirely Nazified. Doubt of being granted justice before the courts has driven the business man from the court-house; and when the higher courts, still staunch supporters of the traditional judicial honor, overrule a decision of the political authority, immediately a new "cabinet-decree" supersedes the judicial decision. The highly advertized Hereditary Farm Act weighs heavily upon the farmers fearing socialization and groaning under the manipulation of the market by the state. The Local Government Act, on paper apparently an excellent piece of legislation, operates very differently in practice because of the complete absence of popular control over the party officials. The city mayor borrows most imprudently from the state if the party interests commend municipal expenses. German official statistics should not be quoted without due reserve—which would probably upset the author's adherence to the National Socialist contention of having wiped out unemployment. Vast numbers of unemployed have been removed from the relief rolls for political reasons. In general, corruption under the banner of party interest knows no bounds, and Dr. Marx justly realizes that one of the many crucial questions is, "What price glory"?

These and similar "marginal notes" are by no means intended to minimize the merits of Dr. Marx' book or to disparage the astounding amount of work and scientific honesty that have gone into it. Dr. Marx' praisworthy analysis retains its value even if some of his conclusions are already overtaken by the rapid course of events peculiar to autocracy uncontrolled by absolute values. His book is one of the outstanding contributions to the discussion of an inexhaustible subject.

KARL LOEWENSTEIN.

Amherst College.

Deutsches Verfassungsrecht. By OTTO KOELLREUTTER. (Berlin: Junker und Dünnhaupt. Revised ed. 1936. Pp. xvi, 202.)

Deutsches Verwaltungsrecht. By OTTO KOELLREUTTER. (Berlin: Junker und Dünnhaupt. 1936. Pp. xii, 143.)

Serious study of National Socialism is, in the United States, still in its

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beginnings. This is partly due to the fact that the Hitler movement, in its earlier stages, was "not very completely nor very promptly followed abroad," as Waples and Lasswell point out in a recent Chicago publication, *National Libraries and Foreign Scholarship* (p. 93). "The writers connected with the movement," the authors explain, "were unknown," and bibliographic announcements tended "to minimize the National Socialist literature until after the seizure of power." While Hitler's *Mein Kampf* was "widely dispersed, interpretations by a well-known jurist like Otto Koellreutter" were even in 1933 "not yet read abroad."

Here are two such interpretations, which American scholars will welcome for several reasons. First, Professor Koellreutter stands out among his colleagues as a level-headed glossarist of the "new creed," who has repeatedly refused to howl with the wolves of "200 per cent National Socialism," and who has faced periodic outbursts directed against him in the columns of *Deutsches Recht*, central organ of the Association of National Socialist Jurists, as calmly as he faced the repercussions of his identification with the Hitler movement long before the academic profession rated it above plain folly. Second, his presentation is forceful, direct, and substantial, though meant to be of introductory character; it is free from the obscurations of an involved style, being easily read and easily grasped. And third, as an old party member, the author is clearly more at ease in dealing with his subject than are most German political scientists of his own generation, whom the National Revolution virtually placed on political probation.

German "constitutional law" in the Third *Reich*—isn't this a contradiction in itself? Not for the author. "In relation to the people as a political entity," he asserts, "constitution means in the national state (*völkischer Staat*) the legal forms of the people's political unity" (p. 17). Straining somewhat the analogy with the organic growth of the British constitution, he enumerates the "fundamental laws" of the German *Führerstaat* as follows: the Enabling Act of March, 1933; the Plebiscites Act of July, 1933; the Party and State Act of December, 1933; the Reconstruction Act of January, 1934; the Succession Act of August, 1934; the Revised *Reichsstatthalter* Act and the Local Government Act, both of January, 1935; the National Defense Act of March, 1935; and the Nuremburg Acts of September, 1935 (the Flag Act, the Citizenship Act, and the Racial Segregation Act).

The book, however, does not follow the pattern of a running commentary on these enactments, but aims at a broad systematic treatment of the theory and practice of modern German government. Its eight sections deal with the political foundations of Liberalism, Marxism, and National Socialism, particularly the "National Socialist *Rechtsstaat*" ("sheer power without law becomes arbitrariness"); the historical development of Ger-

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man national unity since the collapse of the First *Reich*; legal sources and symbols; people and nation, especially citizenship and "fundamental rights" of the citizen; the rise of the unitary state; the structure of the German *Führerstaat* and the "three media of political leadership" (party, civil service, and army); the "three forms of leadership" (legislation, administration, and adjudication); and finally, the "constitutional incorporation of the economic, religious, and cultural energies of the people." Apart from the index, American readers will most appreciate the fact that Koellreutter has underlined many of his most illuminating comments by introducing them with a helpful "it is self-evident." All in all, the tersest and most instructive German contribution.

The companion volume on German administrative law, which reflects Koellreutter's long experience on the bench of the Thuringian supreme administrative court, is a shade more conventional in its arrangement, but thereby testifies to the conservation of much of the traditional heritage of efficient and lawful administration and of administrative justice. The author stresses the need for thorough professional and legal training of all civil servants as much as the necessity of their "correct" political attitude. Organizational problems, particularly the status and functions of local "self-government," and the instrumentalities of "legal protection" of the citizen have found adequate attention. This book, too, deserves to be widely consulted.

FRITZ MORSTEIN MARX.

Harvard University.

Hitler; A Biography. By KONRAD HEIDEN. (New York: Alfred A. Knopf. 1936. Pp. x, 390.)

Hitler. By RUDOLF OLDEN. (New York: Covici, Friede. 1936. Pp. 394.)

These two important biographies appeared simultaneously in English translations and present almost identical portraits of Hitler and his *Reich*. They were written by German journalists now in exile, Heiden having formerly been connected with the *Frankfurter Zeitung*, Olden with the *Berliner Tageblatt*. Both authors are critical of the new régime, although Olden is more objective and philosophical than Heiden and less inclined to rely upon rumor. Each volume is a kind of commentary on the psychological and factual material of *Mein Kampf*, checked against all available outside information. Hitler's early life and family connections are fully discussed, as are the subsequent chapters of his amazing career. Olden's biography is more chronologically arranged than Heiden's and carries the story down to the end of 1935. Heiden closes his account with the dramatic "purge" of 1934 and its immediate aftermath; in essence, he has written a revised edition of his *History of National Socialism*, which was reviewed in this periodical last year (Vol. 29, pp. 678–680.)

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Both writers lay particular stress on the rôle of the army in the rise and fruition of National Socialism. Heiden rejects the legend that big business and the Junkers put Hitler in power. Some of the leading industrialists, such as Bosch, Duisberg, and Siemens, opposed Hitler. As for Völger and Thyssen, Hitler and Goebbels did make alliances with them, but "in these alliances one party was dupe, and the dupe was assuredly not Hitler or Goebbels. . . . His [Hitler's] patrons and financiers were the group of the "hard-hit," of the coal and iron industries—groups which speculated on National Socialist government contracts. . . . No, this jaded capitalism . . . certainly did not want to govern the state; it was prepared to put up with any sort of government, if only business would improve a little" (p. 284).

Olden holds that Hitler is not "the son of the people," but the child of the army, although he was never slavishly subordinate to the army and served it in his own way. The National Socialist party "was the product of two factors: propaganda and the army. . . . It was supported in turn by the most varied strata of the people: workers, officers, the middle classes, peasants, landowners, industrialists, and finally again the workers. The connection with the army, sometimes close and sometimes loose, was of primary significance. If we were to call the party succinctly 'the propaganda department of the army,' we should not be far wrong" (p. 81). Olden does not minimize the dualism of party and army and the conflicts arising from it, but shows as the events of June 30, 1934, indicate, that Hitler's lot has been cast with the army.

Space does not permit further analysis of these books, of the graphic style in which they are written, of the pen pictures of Göring, Goebbels, and others, of the new details which the authors have unearthed. Yet neither Heiden nor Olden has written the definitive biography of Hitler, for such a task cannot be accomplished now. Perhaps for a character as puzzling as Hitler, a biography can never be done after the manner of Douglas Freeman's *R. E. Lee.* However that may be, scholars are indebted to Heiden and Olden for a better and more complete understanding of Hitler's personality and the forces at work in the new Germany.

ROGER H. WELLS.

Bryn Mawr College.

Hitler's First Foes. By JOHN BROWN MASON. (Minneapolis: Burgess Publishing Company. 1936. Pp. 114.)

This book supplies an objective and sympathetic account of the relations between the Catholic Church and the Third *Reich.*

The fact that it remained for the *quondam* atheist Mussolini to "solve" the Roman Question in Italy indicates that the struggle between church and state is as much a conflict of will as it is of idea. It is not without

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significance that the first diplomatic *coup* of Adolf Hitler and his neo-pagans was the conclusion of a concordat with the Holy See on July 8, 1933. This achievement is the more remarkable in that although regional agreements had been negotiated with Bavaria (1924), Prussia (1929), and Baden (1932), "no concordat with the German *Reich* had been concluded since the reign of Pope Eugene IV, a century before the rise of Protestantism." The national agreement recognizes as binding the regional pacts and guarantees to the Holy See "full liberty of communication" with ecclesiastical authorities in Germany, recognizes the freedom of the clergy in the conduct of religious work, including the right of "pastoral secrecy," insures freedom of religious association not inconsistent with the aims of the state, and guarantees the inviolability of church property. "The teaching of the Catholic religion in elementary, continuation, secondary, and higher schools shall be a regular subject and shall be given in conformity with the principles of the Catholic Church"—and the right to establish and maintain Catholic confessional schools is guaranteed. In return for these rights and privileges, the Church agrees to consult with the state authorities in selecting bishops, priests, teachers, and text-books, and to "inculcate a patriotic, civic, and social sense of duty. . . . " Before taking over their respective dioceses, bishops must, in the presence of the *Reichsstatthalter* or the President of the *Reich*, pledge "loyalty to the German *Reich* . . . and to cause my clergy to respect the constitutionally established government."

The signing of the concordat was preceded by three long years of bitter conflict between the Church and the National Socialist party. In 1930, the bishop of Mainz declared that Nazi principles were in many important respects in fundamental conflict with the precepts of Christianity. Catholics were forbidden to be members of Hitler's party, and such Catholics as became members were not to be admitted to the sacraments. The undeniably Anti-Catholic, and indeed anti-Christian, sentiment which pervades National Socialism makes permanent peace between Rome and Berlin extremely dubious. In spite of the Concordat, the conflict goes on. The outlawry of the Center party, the censorship and suppression of the Catholic press, the open and systematic attacks upon Catholic youth organizations, the arrest and frequent imprisonment of priests, and the campaign of sabotage against confessional schools are here described in considerable detail. The ancient German greeting "Praise God" has given way to "Hail Hitler" by order of the Prussian secretary of interior, and by decree of the Bavarian department of education, priests and children must add "Hail Hitler" to "Praised be Jesus Christ," even when meeting outside the class room. One may well question the sincerity of a government which signs a solemn pact with the Church and declares itself devoted to a "positive Christianity" and then appoints Alfred

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Rosenberg, the outstanding modern exponent of paganism, to supervise and coördinate the philosophical instruction of the nation. The Catholic Church may find, as have the Locarno Powers, that a treaty with the present German government offers but a feeble foundation for the liberty and security it seeks.

There are not lacking Catholic apologists for Hitlerism in Germany. The Rev. Dr. Michael Schmaus and the Rev. Dr. Joseph Lortz, as well as Franz von Papen, have undertaken to show that Naziism and Catholicism have much in common. Both are authoritarian; both are opposed to rationalism, liberalism, and individualism; both have declared war on socialism and communism. Nevertheless, as Dr. Mason's discussion makes abundantly clear, the Catholic Church cannot surrender to totalitarian fascism without sacrificing its historic mission and abandoning the principle of Christian love without which it has no *raison d'être*. Only as the forces of liberal democracy are strengthened can it look forward with confidence to the future.

PETER H. ODEGARD.

Ohio State University.

De Nordiska Ländernas Statsråd; Studier Över Deras Sociala Sammansättning. By AXEL BRUSEWITZ ET AL. (Uppsala and Stockholm: Almquist and Wicksell. 1935. Pp. 234.)

Although widely known abroad, where they have had intimate contacts with Continental scholars for many years, the Scandinavian political scientists are not so well known in the United States as they deserve to be. The difficulty is due partly to language barriers and partly to our preoccupation with scholarly works from (a) large countries or (b) countries which are governmentally maladjusted.

Another reason for the unfamiliarity of American scholars with Scandinavian political science is that Northern writers have, with few exceptions, concerned themselves almost entirely with philosophical and juristic studies of limited application. It is true that they have on occasion carried out rather exhaustive inquiries into more practical matters of great interest to our actual administrators, but in such cases they have acted, not as academicians especially, but as experts called in by the government to prepare a report on some subject in regard to which there was some prospect of immediate legislative action. Until recently, Swedish scholars did not write general surveys of governments, not even of the governments of their own countries, and they did not write books dealing with current administrative practices and legislative procedure, or with contemporary political parties.

Now, however, such studies are being written and published in forms

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other than that of reports to parliament or municipal assembly. The Political Science Society of Uppsala University began a series of studies in 1933 which are gradually revealing a tendency to apply new instruments of measurement and evaluation. The first dealt historically with the secret committee of the Riksdag according to the constitution of 1809, and the second was a comparative study of parliamentary committees on foreign relations in the (three) Northern countries. Both of these works were written by Professor Brusewitz and published in 1933. The third study dealt with the king and council in the constitution of 1809, and was written by Dr. Gunnar Heckscher.

The latest volume in this series is the one noted at the head of this review. Professor Brusewitz has written the introduction and the summary. The separate analyses of the councils of state (or cabinets) of Sweden, Norway, Denmark, and Finland, were written, in the order given, by Dr. Lennart Linnarson, Dr. Arne Björnberg, and Dr. Sven Lindman.

The method of inquiry employed by Professor Brusewitz and his associates is an elaboration of that used by Professor Laski in his study of the English cabinet, 1801–1924, published in this REVIEW in February, 1928. It was found that the Northern ministries, during the period covered (Sweden, 1809–1934; Norway, 1814–1934; Denmark, 1848–1934; Finland, 1919–1934), were in each case dominated by small groups of statesmen who survived remarkably well the shifting fortunes of the parties they represented. Reckoning British ministries as the most stable, with regard to average duration in office, and French as the least stable, the Northern ministries occupied a position midway between these two extremes, with Denmark having the best record and Finland the poorest.

In all four countries, office-holders (professional politicians) appear to constitute a separate class. They have controlled a majority of ministries in Sweden—seventy-seven per cent of the personnel of all councils, 1809–1934—and they have done nearly as well in the three other nations. Farmers have played a more significant rôle in Denmark than in her sister states, but even in the latter they have wielded power out of proportion to their numbers. When they were classified according to status, it was seen that it had been the large land-owners who early assumed the right to represent agriculture. However, there is in all countries a marked trend toward the acquisition of greater power on the part of the small land-owners.

The only data lacking are those relating to the economic position of the individual ministers. Nevertheless, this study contains information of a sort to throw genuine light on the processes of government. Additional inquiries into the composition of parliaments have already been instituted. The excellent records and the extraordinary statistical resources

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of Sweden have scarcely been touched. One can reasonably look forward to many valuable studies of the kind here noted in the next few years.

ROY V. PEEL.

New York University.

Europe and Europeans. BY CARLO SFORZA. (Indianapolis and New York: The Bobbs-Merrill Company. 1936. Pp. x, 326.)

Locarno; A Collection of Documents. EDITED BY F. J. BERBER. (London: William Hodge and Company. 1936. Pp. xvi, 405.)

Vital Peace. BY HENRY WICKHAM STEED. (New York: The Macmillan Company. 1936. Pp. x, 346.)

These three volumes view Europe's tragedy in past, present, and future tenses. Count Sforza, Italian foreign minister in 1920–21 and now an anti-Fascist in exile, has scarcely written "A Study in Historical Psychology and International Politics," as his sub-title declares and his chapter headings imply. But out of his broad culture and rich experience he has written what is equally valuable: a series of reminiscences, full of political revelations, apt quotations, shrewd judgments, and penetrating analyses. No student of recent diplomatic history can afford to neglect this book, nor should any liberal overlook it. It is dedicated "To Those Who Still Want To Hope."

With unusual felicity of style and much incident and color, Count Sforza comments on the war and the peace, the pre-war and post-war epochs, the relations among the Powers, the colonial illusion, the Little Entente, Poland, Spain, and a variety of other places and problems. As he approaches his declining years, he remains one of the few sincere and devoted liberals of a generation which is dying. Mazzini and Cavour live again in these pages. So also, in vivid personal recollection, do George V and Albert of Belgium, Benedict XV, Sonnino and Giolitti, Masaryk, Alexander of Yugoslavia, and many other figures of note. The observations on Italian foreign policy, on the settlement with Jugoslavia in 1922, on Vatican diplomacy, on Syria, and on the Jewish-Arab conflict in Palestine are particularly stimulating. Sforza still has faith in Europe and some slight hope for liberalism and for peace. But he concedes that only a miracle can prevent disaster. "The galley slaves, riveted to their seats, ply their oars knowing that each stroke brings them nearer to death. But this time, if the shock comes, the galley slaves will not go down alone."

The collection of Locarno documents, printed in Germany, was brought together by the new research director of the Hochschule für Politik and issued in the name of the German Academy of Political Science and the Institute of International Affairs of Hamburg. In it are to be found

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seventy-six texts of treaties, diplomatic notes, speeches, interviews, and other materials relevant to the Locarno crisis. Here, says Joachim von Ribbentrop in his preface, are "the facts," "the truth," the justification of the German action of March 7, 1936, and the evidence of the Third *Reich's* devotion to peace. But German propaganda remains stupid. The last document should have been omitted. It is the British questionnaire of May 8 which Hitler has never answered, since an answer would disclose too frankly Nazi plans for war to the east. Count Sforza unwittingly sums up the significance of these four hundred pages in a sentence: "An armed Rhineland means the immobilization of the French at their frontier; and the complete freedom, for an aggressive Germany, to launch a war of 'civilization' against Russia."

Mr. Steed, distinguished British journalist, reconsiders war in his "Study of Risks." He sums up twenty years of thinking about peace and challenges pacifists and non-pacifists alike to think. He writes intelligently and persuasively. His smooth, engaging pages are not as irrelevant as most peace literature. He quotes Lord Grey: "Learn or Perish!" He is not content to demonstrate anew that war is monstrous and that the adventure of peace must be made vital and dramatic if it is to succeed. He perceives the present enemy: Hegel, Nietzsche, Bernhardi, Banse, Hitler, the fanaticism of the tribal gods, the sword-rattling of irresponsible dictators. He has hopes and dreams—receding into the centuries to come like those of H. G. Wells—and he fears that man may learn too late. He surveys sensibly the lost opportunities of 1919, Locarno, the Kellogg Pact, security, neutrality, and all the "might-have-beens." But he has little to say about British foreign policy today, about treason and cowardice in the face of aggression, about the constant and weary retreat of the democracies before the fascist offensives. Like most British liberals, he scarcely sees that this is the road to catastrophic war and the suicide of Europe. Like others on the sinking ship, he cannot man the pumps or seize the idle helm, but is content to pray and to seek consolation in vain hopes amid the rising waters of doom.

FREDERICK L. SCHUMAN.

Williams College.

Collective Security. By MAURICE BOURQUIN. (Paris: League of Nations International Institute of Intellectual Coöperation. 1936. Pp. ix, 514.)

This volume, a record of the Seventh and Eighth International Studies Conferences, presents a collection of memoranda and discussions on the general problem of collective security by well known authorities in the field of international law and relations from fourteen countries. The subject is introduced by opinions on collective security from the viewpoint of several countries, the more notable being the summary of the French

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attitude by Georges Scelle and René Cassin, that on British policy and the collective system by W. Arnold Forster, and Phillip C. Jessup's treatment of international security from the United States' point of view.

The method adopted by M. Bourquin in the remainder of the work is to give first the memoranda submitted on each specific subdivision of the general topic and then, immediately following, the group discussion of that subject. On the first of these major subdivisions, "Fundamental Principles," there is fair agreement as to the meaning and value of the concept of collective security. The only dissension comes from the Italian contributor, Francesco Coppola, who finds collective security a myth which has proved "a paralyzing burden on European politics" and has hidden the real problem, i.e., the avoidance of war through satisfying the essential needs of nations and not the repression of war by collective force. The discussion is devoted largely to criticism of M. Coppola's position by the other conferees. The second major subject, "The Prevention of War," centers about the problem of implementing Article XIX of the League Covenant and the peaceful revision of the status quo. One of the chief contributions here is made by Professor Jessup, who, following a point raised by Professor de la Pradelle, Lord Lytton, and others that the revision of treaties in its juridical and political aspects is merely one of the very small aspects of the problem of peaceful change, suggests there should be some sort of an international body comparable to the Mandates Commission, which should not take decisions but before which, as a matter of usual procedure, a state could lay facts relative to a situation which it believes requires revision or adjustment. The fourth division, concerning the repression of war, deals with the determination of the aggressor, sanctions and mutual assistance, and the rôle of neutrality in a collective security system.

In editing, M. Bourquin has succeeded in retaining the meat of the memoranda and discussion and in achieving a coherence difficult in a compendium of this sort. The work's chief fault is the lack of a topical index, which would save scholars much reading to get at desired material.

WILLIAM J. RONAN.

New York University.

The Balkan Conferences and the Balkan Entente, 1930–1935. By ROBERT JOSEPH KERNER and HARRY NICHOLAS HOWARD. (Berkeley, Cal.: University of California Press. 1936. Pp. x, 271.)

The Balkans and the Near East remain one of the forgotten regions of the world, in spite of the fact that the conflagration of the World War flamed up there in 1914. Strange to say, there is in English no systematic and comprehensive up-to-date treatment of this region, although there are numerous works on its individual problems. But ninety-nine per cent

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of them are unobjective or biased, and the rest of them, such as the books of Schevill, Gewehr, W. Miller, Mitrany, and Durham, are already too far removed from the contemporary scene, having been published a number of years ago.

The Kerner and Howard volume has relieved this lack of scholarly studies in one important respect. By focussing attention on the Balkan conferences between 1930 and 1934, it has become the best current contribution to our knowledge of international relations of the Balkans. The treatment is superior to a similar study by Padelford, being clearer, more authoritative, and based more extensively on original sources. An introductory chapter on the geographical, racial, economic, social, political, and historical perspectives of the whole Balkan problem is the best analysis known to the reviewer. Bibliographies at the chapter ends as well as a classified bibliography of twenty-four pages at the close of the book are most exhaustive and cite numerous works in Slavic languages which, although indispensable, are nearly always unknown to American scholars. The appendix contains sixteen documents pertaining to the Balkan Conferences, carefully translated from various sources.

One regrets only that the authors did not see fit to treat more extensively the socio-psychological aspects of the home politics as related to foreign relations of the Balkans. There is still need for a book which will treat carefully the post-war internal politics of the Balkans and tie it up to the sociological background of that region. But for some time there will be no need to prepare another work on the Balkan conferences, as the present work is a most adequate tombstone to those idealistic efforts so characteristic of our vain striving for peace. Certainly there is no other single volume on the subject that contains so much digested material and so much learning, presented so informally and so urbanely.

JOSEPH S. ROUCEK.

New York University.

Western Civilization in the Near East. By HANS KOHN. Translated by E. W. Dickes. (New York: Columbia University Press. 1936. Pp. xi, 329.)

The Ottoman Empire and Its Successors, 1801–1927. By WILLIAM MILLER. (London: Cambridge University Press. Fourth Edition. 1936. Pp. xv, 642.)

In the first of these books, Professor Kohn first traces the historical relationship between Near Eastern peoples and their environment. He adopts the thesis that there has always existed an essential environmental unity in the Near East, and to illustrate his point he cites the observation of a present-day Mohammedan, "Men resemble their time

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more than they do their fathers." In this connection, his discussion of religions and their effect on cultural development is particularly good. The author next sets forth the contemporary problem as determined by "changing man and a changing environment." In successive chapters, the interrelations and implications of world communications, world economics, and world politics are discussed. The concluding chapter contains a provocative discussion of the "methods and problems of Europeanization."

Professor Kohn links clearly the development of nationalism with the impact of Western culture on Oriental peoples and stresses the results of the economic exploitation of the Near East by the Great Powers. The implications of world politics for these countries are related to their position as "transit" regions on the route to India and the Far East. The chapter on world communications is not as well organized as the remainder of the book. There are several contradictions, and it is repetitious. A more extensive discussion of the early development of the Berlin-to-Bagdad railway project would have made this more complete, and it would be interesting to know the author's interpretation of the apparent renewal of the German *Drang Nach Osten* under Hitler. The bibliography is intended to supplement the lists given in Professor Kohn's earlier works on nationalism.

The author concludes that "for thousands of years human civilization, split up between continents and wide geographic areas, developed along entirely separate paths; today, for the first time spatial and intellectual interconnection is established. Mankind as a whole is beginning to confront the same problems and needs. What was formerly, even in the nineteenth century, the task of separate nations, is increasingly becoming the task of mankind. Nationalism, which first appeared as a formative principle in the history of Western Europe, has in the last few decades extended its dominion over the whole earth. It stands today at the height of its power, it rules history and destiny, thought and action, in all nations, in every latitude and clime." He goes on to state, however, that this nationalism must be subordinated to a larger interest if civilization is to progress. The book should have a wide appeal, for it is concerned with the fundamental problems of changing civilization in East and West.

The Ottoman Empire and Its Successors is one of the standard British texts on the subject of the Turkish Empire and its succession states. The present edition carries the story down to 1936 through the addition of an appendix and a postscript added to the book substantially as it appeared in 1927. The work is a factual presentation of the gradual decay of the Ottoman Empire from the beginning of the nineteenth century to its final disintegration after the World War. Greatest attention is given to

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the Balkan area, since the history of the Asiatic dependencies of Turkey is covered in other volumes of the Cambridge Historical Series of which this volume forms a part. The period 1927 to 1936 is described in less than twenty pages, a third of which are taken up with developments in Greece. The significance of two events, the restoration of the Greek monarchy and the assassination of King Alexander of Yugoslavia, is pointed out in the concluding pages of the appendix.

WILLIAM C. JOHNSTONE, JR.

George Washington University.

The Ratification of International Conventions; A Study of the Relationship of the Ratification Process to the Development of International Legislation. BY FRANCES O. WILCOX (London: George Allen and Unwin, Ltd. 1935. Pp. 349.)

This book should be read with interest by those who agree with Dr. Wilcox's premise that ratification of treaties and conventions of a multilateral nature holds the "key position" in the development of international legislation (p. 15). The premise would seem to be a sound one, as Dr. Wilcox shows in a careful discussion of the constitutional procedures of some sixty-four states that "treaty-making in its larger aspects has become almost universally a legislative as well as an executive function . . . Only one important state, Japan, has failed to give the legislative body an important part in the conclusion of international agreements" (p. 100). The author is careful to point out that "it is not to say, however, that the era of personal negotiation of treaties by the chief of state is past. The recent development of dictatorships in Europe reveals new possibilities along this line," and in such cases the constitutional requirement of legislative approval of a treaty becomes "a mere formality when the dictator's own party forms an overwhelming majority in the legislative chambers" (p. 22). Of course, it is a mere formality, but the very fact that the modern dictator takes the precaution of going through the forms in question would seem to indicate that even here Dr. Wilcox's view regarding the importance of ratification in its relation to international legislation has much to support it.

Further support for this view is to be seen in the Draft Convention on "The Law of Treaties" prepared by the Research in International Law under the auspices of the faculty of the Harvard Law School. The Convention consists of thirty-six articles, of which at least twelve deal with the subject of ratification and the related questions of accession and reservation. Since Dr. Wilcox's work is as much a study in international relations as it is a study in international law, it can be used as an admirable supplement to the strictly legalistic "comment" which is set forth at length under each of the articles of the Convention mentioned. The value

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of such a supplement may be emphasized, as there is generally a sort of twilight zone between international law and international relations; and this is particularly true of the subject of ratification, where law and politics are so closely connected that it is often difficult to distinguish them. Dr. Wilcox does not always succeed in distinguishing them, but this is to be expected at the present stage in the development of the ratification process.

The author has much to say about "delayed ratifications," "methods of evading ratification," and the effect thereof on the development of international conventional law. Nevertheless, he finds that through the League of Nations, the International Labor Organization, and the Pan-American Union a great deal is being accomplished in bringing about the passage (ratification) of such law. The force of this accomplishment is brought home as one bears in mind that when Dr. Wilcox declares that "the League of Nations in a little over a decade has created a huge body of international law, much of which is almost universal in its application" (p. 159), he is referring to international conventions negotiated through the League which have been duly ratified according to the fundamental law of the states parties to the conventions in question. Although he finds that the International Labor Organization has functioned with respect to the ratification process more efficiently than the League, the author never permits his reader to lose sight of the practical difficulties involved. "Do you realize," the Director of the Organization asked its critics in 1928, "after what efforts, after what insistence, after how many journeys, after how many negotiations, after how many appeals to public opinion and to supporters in Parliament and outside, it is possible to obtain a single ratification, to get the procedure of ratification under way?" (p. 204). The author adds: "When expressed in these terms, the work of the International Labor Organization takes on a deeper significance" (p. 204).

A word should be said about the impartial and judicial manner in which Dr. Wilcox discusses the function of the United States Senate in its relation to the general problem of ratification and international legislation. So many discussions of this nature have been marred by extreme statements. It is a pleasure to find that it is possible to be, as Dr. Wilcox apparently is, a strong believer in the League of Nations and at the same time to consider the Senate's treaty functions in an objective manner.

CYRIL WYNNE.

Department of State,
Washington, D. C.

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Can We Stay Out of War? By Phillips Bradley. (New York: W. W. Norton and Co., Inc. 1936. Pp. xiii, 288.)

Recent developments raising the question of the application of neutrality laws to the acute civil war in Spain give an even keener edge to the argument of Professor Bradley's volume. In asking the question whether we can stay out of war, he is in effect asking whether, in view of the variety of interests involved in neutral trade with belligerents and the sacrifices which it would be necessary to make if an effective neutrality were to be maintained, we are willing to pay the price of peace in terms of commercial profit. The fact that the struggle in Spain raises political issues which parallel or, it may be, cut across the motive of gain on the part of neutrals has only added new factors of complexity to the situation. The neutral state must now impose restraints not only upon the commercial interests of its citizens, but upon their desire to aid one or other faction in a country torn by civil war. The author writes, indeed, with the possibility of international war in view, whether in Europe or in the Far East, but his observations are equally suited to the new issue of class warfare that looms upon the horizon.

Do we need to abandon our traditional neutrality policy and formulate a new one? What, in the last analysis, is our "national interest" which we must seek to protect, and what is the effect of a foreign war upon it? Through what phases has our neutrality policy passed, and what changes would need to be brought about in our political and economic life if the concept of a true impartiality were to be given practical application under modern conditions? These are the leading questions asked by the author, and his answer to them is worked out, not in terms of theory, but in terms of the practical situations with which the United States government is confronted today. Step by step, the author outlines the deficiencies of the Neutrality Act of 1935 and the amendments needed to secure what he describes, in the words of Jefferson, as "a fair neutrality." Having determined the legal provisions with which we should "implement a fair neutrality," he next takes up the question of whether such a policy would be practically workable and whether it would hold against the pressure brought against it by interested parties. Then, in closing, he asks whether a "fair neutrality" is enough, that is, whether it can be adjusted to a system of sanctions instituted by the members of the League of Nations against an aggressor; and further, whether it could not be made more effective by a program of inter-neutral coöperation which the United States could initiate.

It is clear that the public at large, much as it may want to stay out of war, has not thought through the conditions of doing so. Professor Brad-

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ley's volume, written in straightforward and popular language, should aid greatly in the necessary educational process.

CHARLES G. FENWICK.

Bryn Mawr College.

American Diplomacy. By BENJAMIN H. WILLIAMS. (New York: McGraw-Hill Book Company. 1936. Pp. xii, 517.)

There has long been a crying need for a book on American diplomacy written from the viewpoint of policies and problems rather than from the customary basis of diplomatic history. John Bassett Moore's *Principles of American Diplomacy* was such a volume, but its last revision was in 1918. The present volume by Professor Williams aims "to describe and analyze existing policies and institutions rather than to trace the diplomatic narrative."

Three-fourths of the work is devoted to policies, while the last part discusses conduct and machinery. In the section devoted to regional policies, such general questions as neutrality, non-coöperation, non-intervention, and the Monroe Doctrine are discussed. These are followed by a consideration of the Caribbean area and various Latin-American problems. Our relations with the Far East are then taken up, with a separate chapter on the problem of the Philippines. The second part of the volume is devoted to economic policies such as export promotion, capital exports, and the protection of loans and investments. The third section covers the policies of peace and world organization, such as the relations of the United States with the League of Nations and with the Hague and World Courts, the Pact of Paris, and the problem of the limitation of armaments. The last part of the book is devoted to conduct and machinery. This section includes chapters on the control of foreign relations, treaties and executive agreements, and the machinery of foreign relations both at home and abroad. An excellent topical bibliography is appended.

The author has done a very fine piece of work. The book is exceedingly readable, due to the large number of specific examples cited to illustrate the principle or problem under discussion. The chief criticism that might be made is that in attempting to cover such a vast number of problems the author is unable to give adequate attention to all of them. For example, the abrogation of the Platt Amendment, a vital step in our relations with Latin America, is dismissed with a single sentence. The original settlements of the war debts are entirely omitted, and the rôle played by the United States with reference to reparations is not mentioned. However, it is an author's privilege to limit his field, and Professor Williams deserves particular credit for presenting many subjects which are entirely overlooked in the previously published studies on American

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foreign policy. The volume should serve as a most satisfactory text for political science courses in American diplomacy.

GRAHAM H. STUART.

Stanford University.

The Mexican Claims Commissions, 1923–1934. BY A. H. FELLER. (New York: The Macmillan Company. 1935. Pp. xxi, 572.)

The major purpose of this scholarly book, which is a study "in the law and procedure of international tribunals," is, as its title suggests, to present a "detailed exposition of the Mexican Claims Commissions." The author, however, has treated his subject critically as well; and, in addition, has discussed the work of the Mexican commissions in the light of the larger background of recent history, economic philosophy, and the development of international law as related to pecuniary claims.

An historical prelude treats briefly the history of international claims against the United Mexican States, the Mexican revolutions from 1910 to 1920, and the negotiations leading up to most of the treaties entered into for the settlement of both revolutionary and non-revolutionary claims. Following the historical background, there is a general survey of the contents of the treaties and of the organization and work of the respective commissions. Chapters are devoted to the subjects of claimants, direct and indirect responsibility, jurisdiction, procedure, evidence, and damages.

In the appendix, which contains 252 of the 572 pages of the book, the author has performed a real service in setting forth the terms of the various conventions, rules of procedure, and other documents related to the work of the commissions. Mr. Feller has made available for the first time a considerable amount of factual data from documents in the archives of the Mexican Foreign Office, and one of the most important contributions of the book lies in the publication and discussion of heretofore unpublished or inaccessible material related to the activities and decisions of French, German, Spanish, Italian, and Belgian commissions.

The treatment of the Calvo Clause would probably have been improved had the author included a discussion of Commissioner Nielsen's sixty-two-page dissenting opinion in the International Fisheries Company case dealing with the problem. Probably the most comprehensive and lucid discussion of the orthodox point of view of the Calvo Clause to be found in the literature of international law is contained in that dissenting opinion.

In the reviewer's judgment, Mr. Feller's suggestion (pp. 316–317) that the Statute of the Permanent Court of International Justice should be amended to allow of several *chambres de réclamations* to avoid the defects of the present *ad hoc* system is worthy of the serious attention of foreign

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offices. International claims should not be delayed for decades before settlement. Some permanent institution should certainly be created to settle them within a reasonable time after they arise and, at the same time, in a manner which will not tend to disturb the normal international relationships of the states involved.

WILLARD B. COWLES.

Washington, D. C.

BRIEFER NOTICES

AMERICAN NATIONAL GOVERNMENT AND POLITICS

A welcome addition to the collections of material for the study of American government and politics is *Current Problems of Public Policy* (Macmillan Co., pp. vii, 527), edited by Charles A. Beard in collaboration with George H. E. Smith. The volume is the result of action taken by the American Political Science Association at its Chicago meeting in January, 1935, when it created a sub-committee of its Committee on Policy and assigned it the task of making a survey of materials and of preparing the volume. The sub-committee consisted of Finla G. Crawford, chairman, together with Ben A. Arneson and Charles A. Beard. The volume is divided into three parts. The first part contains selections embodying statements of opinion contained in official programs and platforms of principles, such as the "Epic" plan and the principles of the Socialist party, the Share-Our-Wealth Society, and the National Union for Social Justice. Part II deals with issues of government in the course of action, the emphasis being placed upon the public utility problem. Part III is a short section of only 50 pages dealing with problems of administration. The sub-committee worked under certain self-imposed limitations. First, the emphasis was to be placed on ideas and functions of government, rather than on its machinery; secondly, all of the papers were to be of an official character; and finally, the time covered was to be roughly the federal fiscal year 1934–35. The sub-committee admits that the restriction to official papers prevents giving an all-round view of each issue, and it is regrettable that, in the case of especially controversial subjects, such as the utility issue, some material on the other side was not included. Subject to these limitations, the material is well selected and will be found useful for class instruction. The value of the selections is enhanced by introductory notes which precede most of them. The book does not displace, but supplements, existing collections of material in this field.—J. M. MATHEWS.

Confronted with a steadily thickening maze of government documents, librarians, research workers, and general students will be grateful to Dr. Lawrence F. Schmeckebier for his *Government Publications and*

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Their Use (Brookings Institution, pp. xiii, 446). As explained by the compiler, the book's purpose is, not to supply a catalogue, a bibliography, or a check-list, but "to describe the guides that have been provided, to indicate the limitations and uses of the indexes, to explain the systems of numbering and the methods of titling, to call attention to some outstanding compilations or series of publications in several fields, and to indicate how the publications may be obtained." Sixteen chapters are packed with information, skilfully organized and lucidly presented; and an unusually full index is likely to leave little room for doubt as to where any desired item will be found. In the main, the publications dealt with are those of the national government, but documents of the states also receive some attention.—F. A. O.

For use in undergraduate classes, Professor H. Arthur Steiner has brought together, under the title of *Significant Supreme Court Decisions, 1934–1936* (University of California at Los Angeles, pp. 72) liberal extracts from eleven Supreme Court decisions of the period indicated, bearing especially upon the federal principle, the theory of separation of powers, and the limitations imposed by the Fifth and Fourteenth Amendments. In a six-page introduction, the compiler manages to tell the youthful student of constitutional law a good many things that he ought to know.

Except as a campaign document, there is little excuse for a "frankly partisan" book such as William Allen White's *What It's All About* (Macmillan Company, pp. 146). Governor Landon, his family, Kansas, and the Republican platform are idealized, while President Roosevelt and the Democratic platform are ridiculed. The author ignores his own inconsistencies and those of his party. For instance, he seems to feel that President Roosevelt is seeking revolutionary change in following the federal centralization idea of Alexander Hamilton, but he frankly admits that Alexander Hamilton "begot the Republican party." To him, what President Roosevelt says "seems moonshine," but what Governor Landon says is "plain truth."—DANIEL B. CARROLL.

To accompany his *Political Parties and Electoral Problems*, Professor Robert C. Brooks has prepared a convenient parallel-column edition of the Republican, Democratic, Socialist, Communist, and Union party platforms of 1936—*Platforms of the Major Parties in 1936*, etc. (Harper and Brothers, pp. 611–639).

STATE AND LOCAL GOVERNMENT

The Nebraska experiment, and the widespread discussion of unicameralism resulting therefrom, has prompted A. E. Buck, in *Modernizing*

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Our State Legislatures (American Academy of Political and Social Science, Pamphlet Series, No. 4, pp. v, 45) to survey the problems of present-day legislatures and their possible solutions. The work is divided into four parts, and is accompanied by three pages of bibliographical notes. Part I, dealing with tomorrow's demands on state legislatures, is brief and introductory; Part II considers, under the heading of weaknesses of the existing legislative system, their large and unwieldy structures, their cumbersome and often ineffective methods, the lack of legislative-executive cooperation, and the failure to provide responsible leadership. Part III, devoted to proposals for strengthening the legislative system, considers methods of improving the quality of the membership and of legislative procedure and methods, of curtailing the quantity and improving the quality of legislation, and of establishing party responsibility and executive coöperation. While these two parts provide a concise statement of the best current thought on the aspects of the subject with which they deal, it seems to the present reviewer that the author is unduly optimistic in Part IV, which presents an extensive survey of the promise of the one-house legislature, regarding the benefits likely to be derived from the operation of the unicameral system. This part contains a statement of the history of unicameralism in three states in the early days, and an excellent summary of proposals for the system prior to its adoption in Nebraska. A description of the Nebraska plan is followed by a sketch of proposals for unicameralism in the United States since 1934, and great emphasis is laid upon its success outside the United States, especially in Ontario. In his specifications for an ideal legislature, the author urges a smaller membership; longer terms; more adequate compensation, and this on the basis of an annual salary rather than per diem; a secretary for the legislature, with civil service for the staff of legislative employees, and a legislative council for planning; annual sessions, the need for which has been clearly demonstrated; improvements in procedure in the actual passage of bills and in the relations of the executive and administration to the legislature. These proposals for modernizing the legislative machinery are fundamentally sound.—W. Brooke Graves.

Each person writing on state government in the United States probably tries to present a composite picture, but the portrait tends to resemble the government of the state in which he lives. Massachusetts, New York, New Jersey, Indiana, Illinois, and California have occupied the central position. Now Pennsylvania gets the spotlight in W. Brooke Graves' *American State Government* (D. C. Heath and Co., pp. xiii, 829). Evidence of local color may be found in the sympathetic description of the functions of political bosses and in a rather pessimistic attitude toward the working of direct primaries and of the initiative and referendum. Negatively, Penn-

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sylvania interest is evidenced by errors in various references to government in at least one other state. Membership in *both* houses of the Ohio General Assembly varies from session to session (p. 199), and salaries have been doubled. The governor's salary is $10,000 (p. 301). Not James M. Cox, who was then governor, but John N. Patterson led the movement for Dayton's city-manager charter (p. 697). No amendment requiring classification of cities was adopted in 1897 or in any other year (p. 699). A few other errors are noted: Rhode Island's counties (pp. 683, 715); "we have already seen . . . " (p. 591); twenty-four is not "a majority" of the states and twenty-three is more than "a few" (p. 299). This volume, however, is much more than an analysis of government in Pennsylvania. It probably surpasses all predecessors in the amount of comparative data, most of which, being in tabular form, can be used for comparisons or can be used merely to make applications to the student's own state. In addition, there are extensive quotations from authorities on various phases, so that supplementary readings are almost, if not quite, unnecessary in the ordinary college course in state government. Government, not administration, is dealt with, as Professor Graves gives notice in the preface. Even local government gets little attention. There is one chapter on the local units, and these are dealt with incidentally in the chapter on state centralization. An enrichment of courses in state government should result from the use of this volume.—HOWARD WHITE.

Not yet thirty years of age as a state, with barely forty-five years of economic and social development, yet with exceptional population growth, Oklahoma, according to *Organization and Administration of Oklahoma* (Oklahoma City: Harlow Publishing Co., pp. xx, 483)—a report prepared by the Brookings Institution—presents many special problems because of its "rapid and exploitative developments." Oklahoma is advanced materially but retarded socially. It is developed economically but immature governmentally. Its basic need is to overcome a political lag that is more pronounced in this state than in most others. It needs moral leadership and enlightened opinion. The legislature must devote itself to the adoption of general policies and not to interference in the details of administration. The legislature and individual legislators unfortunately dominate in administration. Legislative reorganization is imperative and a state council is suggested. Elected officials must be prevented from controlling, demoralizing, and corrupting the administrative services. The constitution, containing a mass of material which should have been left to the legislature or to the administrative agencies, must be viewed as one of Oklahoma's fundamental problems. Necessarily, the report states, "the recommendations are so numerous and, in some cases, so drastic that it is useless to expect that they will all be promptly

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adopted." Very careful exposition is presented of the existing situation, interspersed with the numerous specific recommendations. For the most part, these follow in general, and in some cases in detail, the trend of similar past surveys. It was to be expected that recommendations on school organization, public welfare, and finance should present principles common to many states. Appointment rather than election of officials, greater responsibility and authority for the governor, a state comptroller system and budgetary responsibility, county unit for schools, a modern personnel system—these, and many of the others, have become fairly standard recommendations in recent years. This survey, however, applies these standards of public administration directly, frankly, and intimately to Oklahoma's peculiar problems. As in earlier surveys by the Brookings Institution in other states, there is much that can be read and studied with profit outside the particular state analyzed. There is evidence of perfecting of survey technique and of maturity of judgment both in the analysis and in the presentation of results.—FREDERICK H. GUILD.

Georgia's state and local governments are subjected to critical analysis and evaluation in Cullen B. Gosnell's *Government and Politics of Georgia* (Thomas Nelson and Sons, pp. 248). Among the fundamental defects of government are emphasized: an outworn constitution with a hopeless patchwork of amendments; lack of the short ballot and the merit system; decentralization of the court system; too much reliance upon the general property tax; and too many local units of government. The constitutional apportionment of seats in the house of representatives whereby the eight counties having the largest population are given three representatives each, the thirty counties having the next largest population two representatives each, and the remaining counties one representative each has resulted in a "rotten borough representation" of the worst form. A unit system of nomination gives each county twice as many unit votes as it has members of the house of representatives, and candidates for governor and United States senator must receive a majority of these unit votes to secure the nomination of the Democratic party. Economies of approximately $1,000,000 annually have followed the adoption of the reorganization acts of 1931 and 1933, the largest savings coming from the consolidations made by the board of regents of the University of Georgia. Thirty-four counties have a responsible executive official in charge, though he is not given the title of county manager. Consolidation of two counties with Fulton county in 1932 has brought good results. While the book is written in a popular style and is intended primarily for the general reader, it contains much of interest for the political scientist. Specific suggestions for the improvement of state and local government are made in every chapter. The book is a valuable contribution to the literature of state government.—FRANK M. STEWART.

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O. Glenn Stahl's doctoral dissertation, *Training Career Public Servants for the City of New York* (New York University, pp. 262 mimeo.), constitutes a valuable addition to the rapidly growing body of literature on personnel training. Mr. Stahl first makes clear his understanding of the implications of a career service, and embraces the requisites set out by the Committee of Inquiry on Public Service Personnel. He next traces the history of personnel training in this country. This chapter is somewhat weakened by the secondary character of the research underlying it and its consequent inadequacy as regards current training programs, and by its failure to take into account European experience in personnel training which has influenced our own development enormously. The author's section on the New York City service, which attempts to establish the terms of reference, as regards entrance and promotional opportunities, for a training program, is well conceived, but a marked predisposition toward the publication of working-papers impairs the clarity of his treatment. The section on pre-entry training is graced by a forty-page table and several of lesser pretensions, but the author partially redeems himself in an extremely well-considered practical program which he develops for the municipal service and the educational institutions in New York City. The treatment of in-service training seems fairly adequate as regards departmental training; in the discussion of in-service training in the educational institutions, however, one feels that Mr. Stahl was in entirely too much haste to bring in his dissertation before the graduate school's deadline.—ROWLAND EGGER.

FOREIGN AND COMPARATIVE GOVERNMENT

Arthur Berriedale Keith's *A Constitutional History of India* (Methuen and Co., pp. x, 536) traces elaborately the political development of that country from the dawn of the seventeenth century until a year ago. Into the making of this encyclopedic work has apparently gone much painstaking study and research. It represents the point of view of an English scholar who believes in a "manifest destiny" and a "white man's burden." The book is divided into eleven lengthy chapters, sometimes piling obscure details upon details. Almost a third of the volume is devoted to the East India Trading Company, its attempt to secure a political foothold in India, extension of its domination, establishment of government, system of administration, exploitation and corruption. Then came Victoria as the Empress of India, inaugurating the golden age of bureaucracy. Here Mr. Keith tells at great length of the central and provincial governments, Indian finance, frontier wars, military defense, the judiciary and the legal system, and the Indian states. Coming to the age of Indian political unrest, he discusses the Minto-Morley concessions, the Montagu-Chelmsford concessions, and the Simon-Hoare concessions better known

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as the Government of India Act, 1935. The empire-minded author bewails Mr. Ramsay MacDonald's "lack of balanced judgment" because the ex-Premier was once "in favor of great concessions to Indian sentiment"; and he bemoans the fact that the Labor government of 1929 used the term "dominion status" as expressing even the distant objective of British policy in India. Mr. Keith supports the Government of India Act—which is almost as long as a telephone directory, but is without even a bill of rights. He admits, however, that in the federal government only "the semblance of responsible government is presented" and concedes that "the federation was largely evoked by the desire to evade the issue of extending responsible government to the central government of India. Moreover, the withholding of defense and external affairs from federal control, inevitable as the course is, renders the alleged concession of responsibility all but meaningless." In sum, the volume contains just about all there is to be said on the political machinery of India from the viewpoint of a member of the English Liberal party, and the information is intelligently put together.—SUDHINDRA BOSE.

C. P. Stacey's *Canada and the British Army, 1846–1871; A Study in the Practice of Responsible Government.* (Longmans, Green and Co., pp. xi, 287) is all the various things that the name promises. It is a chapter in the history of "imperial defense." It is likewise a chapter in the history of the constitutional relationship between Canada and the mother country during the period when Canada was securing the authority to manage its own affairs. The theme of Mr. Stacey's story is the attempt of the British government to make Canada recruit and pay for her own troops. He shows how Canada, before she became self-governing, had accepted the convenient situation of being protected (even during the War of 1812) by a large resident force of British soldiers paid from London. The date 1846 marked the beginning of a new policy. For responsible government had been granted to Canada, the Liberals were entering on their long lease of power in England, and skepticism as to the value of colonies had become dominant amongst English statesmen. Consequently, the British government adopted the policy of attempting to withdraw British troops from Canada and at the same time persuade her to recruit and support a considerable defense force of her own. The difficulties this policy met both in Canada and in England, and the complications caused by the existence of the United States, are the chief subject-matter of the volume. Eventually, as part of the Cardwell reforms in the first Gladstone ministry, the British garrisons were withdrawn from Canada. One of the results, curiously enough, was to increase enthusiasm for the imperial connection between Canada and the mother country. Based to a considerable extent on research in the Canadian archives, but with illuminating ref-

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erences to English sources, the book is far more than the doctor's thesis that it admits being, and is well worthy of its inclusion in a distinguished series of studies in colonial government.—E. P. CHASE.

In *La Dictature du Fascisme Allemand* (Les Editions Internationales, pp. 213), Grete Stoffel limits herself narrowly to what she terms the juridical aspects of the German fascist dictatorship. Consequently, there is barely a reference to the establishment or general history of the Third *Reich*. The various laws and decrees are analyzed, but no effort is made to point out how these enactments have been administered. For example, there is an extremely fine sketch of the set-up of the "corporative state" as provided by law, but no account of how the few institutions which have been set up under it have functioned. The civil service law is clearly presented and neatly condemned, but there is no appreciation of the act as to its origins or effects. Unemployment, land settlement, welfare relief, and many other topics which one would expect to find are not mentioned. Although the author has failed to provide any flesh and blood for the legal framework of the dictatorship, the skill with which she has outlined the latter deserves high praise. The book constitutes a ready factual reference on such topics as the executive, legislative, and judicial aspects of the Führer's power, citizenship and marriage laws, organization of the party, labor service, Gestapo (Geheimestaatspolizei), and the situation of the *Länder* and communes. That Hitler has been at pains to broaden the basis of his dictatorship through the control of party and numberless other organizations is amply demonstrated. Critical throughout when comment is made, the author is particularly devastating in her treatment of the judiciary and the Nazi concepts of law. When the whims of an individual have the force of law, the inevitable result is terror. In "the brutality of its method of repression, the National Socialist dictatorship recalls the most atrocious despotic régimes of antiquity. It repudiates all sentiment that we have of the culture and moral progress of humanity." —E. C. HELMREICH.

Volume V of the "Studies in Hispanic American Affairs" has issued from the press. Edited by A. Curtis Wilgus, *Colonial Hispanic America* (George Washington University Press, pp. ix, 690), publishes the lectures delivered at the Fourth Annual Seminar Conference on Hispanic-American affairs held at the George Washington University. Besides lectures on certain topics in the colonial history of Latin America, the volume contains in appendices papers presented to the conference by "guest speakers." The first of these is a study of the Roman Catholic Church as an economic factor in colonial Spanish America, by A. R. Wright. Another appendix is a study by Raul d'Eça of Portuguese America as a factor in early diplomatic relations between Portugal and the United States. Five

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appendices by the editor contain his appreciations of histories and historians of Latin America. Two chapters by C. F. Jones are concerned with the geography of Middle and South America. Philip A. Means contributes a scholarly chapter on the aboriginal factor in Latin-American history. Other chapters deal with the European background, the Spanish conquest, the transmission of culture, colonial government, colonial society, and economic life. The rôle of the Church in colonial Spanish America is described in some detail by Mecham. Three chapters by Lanning deal with the conflicting theories concerning the occupation of lands in America. Five chapters by Hasbrouck trace the movements for independence in Spanish and Portuguese America during the first three decades of the nineteenth century. Unlike its predecessors in the series, this volume is equipped with useful footnotes and bibliographies. As it contains contributions by more than a dozen scholars, its contents are of varying interest and value to the specialist and to the general reader.—WILLIAM SPENCE ROBERTSON.

Although planned primarily to supplement Adams and Stephens' *Select Documents of English Constitutional History*, Eugene M. Violette's *English Constitutional Documents Since 1832* (Macmillan Co., pp. xi, 226) is devoted about equally to documents antedating and postdating the terminal year of the older volume, 1885. Altogether, 116 documents are presented, in whole or in part, with no space consumed by introductions or explanatory notes. All relate to the national government; for the original purpose to cover local government also was abandoned as a means of keeping the book within modest bounds. Practically all of the selections are drawn from the statutes; and it would seem that judicial decisions, orders in council, and other types of material might well have been used more freely. The volume, however, will prove convenient for students of modern English history and government.—F. A. O.

The object of *The Balkan States: I. Economic* (Oxford University Press, pp. 154), prepared for, and with the assistance of, the Information Department of the Royal Institute of International Affairs of London, is to provide a review of the economic structure and development of Albania, Bulgaria, Greece, Rumania, and Yugoslavia since 1919. The grouping is admittedly an artificial one, for the five states in no sense form an economic unit. Nevertheless, they share certain characteristics, and this examination of their essential structure and development, and their commercial and financial relations with other states, is very useful. France, Italy, the United States, and particularly Great Britain, have considerable investments in the countries concerned, and hence there are here definite connections of political significance. The work is divided into two main parts, the first dealing with the structure and development of the various states

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up to the incidence of the crisis in 1931, the second describing the effects of that crisis upon their economy and their attempt to combat its repercussions. It is unfortunate that no bibliography is given; but this does not prevent the volume from being one of the most interesting in the field of economic international relations.—JOSEPH S. ROUCEK.

In his *Soviet Money and Finance* (Macmillan and Co., pp. xv, 339), L. E. Hubbard has produced an excellent study of a difficult subject. The tsarist financial structure was based for the most part on Western European usages. When the Bolsheviks came into power, they broke completely with the pre-revolutionary monetary and financial system and created a new system entirely different. The author divides his book into three parts. The first sketches the evolution of Soviet finance from the Revolution to the present time; the second describes in detail the present organization of banking and credit; and the third is devoted to a critical analysis of Soviet financial theory and practice. While Mr. Hubbard is avowedly in favor of the capitalistic system, he does not permit his economic philosophy to interfere with his critical analysis and scientific judgment. There is also an extremely interesting appendix on the purchasing power of the ruble in retail trade.—B. W. MAXWELL.

The only thing of its kind in English yet produced for the territory it covers is *Who's Who in Central and East Europe* (Zurich: Central European Times Publishing Co., pp. 1164), edited by Stephen Taylor. The book contains some ten thousand authentic biographies of prominent individuals selected from seventeen countries—Albania, Austria, Bulgaria, Czechoslovakia, Danzig, Estonia, Finland, Greece, Hungary, Latvia, Liechtenstein, Lithuania, Poland, Switzerland, Turkey, and Yugoslavia. As would be expected, there are omissions of some persons who only recently stepped into the international limelight. But the work is to be reissued every two years, and it will be interesting to see whether public life in the Balkans and other East European states will alter faster than editor and book-printing machines can work.—JOSEPH S. ROUCEK.

Volume IV of the *Journal of the Society of Clerks-at-the-Table in Empire Parliaments* (London: Billing and Sons, pp. 165), edited by Owen Clough, contains the usual miscellaneous but often convenient data and comment regarding constitutional and legislative developments throughout the British Empire during the twelvemonth preceding publication. A considerable amount of space is devoted to an analysis of the new constitution for India; and interest in unicameralism is evidenced by a brief section devoted to experience with one-house legislatures in the United States. The most useful portions of the volume are those concerned with speakers' rulings and procedural changes in various jurisdictions of the Empire.

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INTERNATIONAL LAW AND RELATIONS

Students of international affairs who desire a case-book on the functioning of the Concert of Europe will welcome R. B. Mowat's *The Concert of Europe* (Macmillan Co., pp. ix, 364), for here they will find, in twenty-five brief chapters, accounts of the Concert's varied activities throughout the period 1871–1914. Useful as the volume is as a catalogue of these events, there are, nevertheless, serious limitations on its value. Professor Mowat has apparently written it with the specialist in mind, for he includes no description of the Concert's origin or early development and often omits historical background which would be desired by the general student. For the specialist, the value of the book is likewise restricted because the author does not pretend to make original contributions to the knowledge of many of the subjects with which he deals. His final chapters are in some ways the most interesting, for here the author expounds his thesis that on Germany must fall much of the guilt for causing the World War, not because of her military or naval policies as such, but because she refused to coöperate with the Concert's attempts to mediate the Austro-Serbian dispute and thus to avert war.—Hollis W. Barber.

An English translation of Professor Gottfried von Haberler's important study, *The Theory of International Trade, with its Applications to Commercial Policy* (London: William Hodge and Co., pp. xv, 408), is now available. No substantial changes from the first German edition of three years ago have been made. Professor von Haberler has attempted "a complete and systematic treatment of the main problems arising from international economic transactions," and, despite the emphasis, as indicated by the title, upon the monetary theory and the pure theory of international trade, approximately half of the book is devoted to an extremely penetrating analysis of contemporary trade policies. The author is a sincere believer in free trade, and he considers that the only way out is "to fight the spirit of Protection, to spread far and wide correct ideas about international trade, and to confront the organized forces of sectional interests which support Protection with a powerful organization drawn from those who suffer from it, that is, from the vast majority of the people of the world."—Grayson L. Kirk.

A compact, factual review of Anglo-Egyptian relations has been published by the Royal Institute of International Affairs in London under the title *Great Britain and Egypt, 1914–1936* (pp. 67). This pamphlet is an admirably condensed account of the transactions and negotiations between the two countries relating to the maintenance of the British protectorate during the War, the protection of British interests after the War, the chief points of conflict between Great Britain and Egypt as to

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military policies, and the control of the Sudan. Throughout the discussion, which scrupulously avoids the expression of judgments and opinions, official documents or factual summaries of them are relied upon. A number of essential documents, such as the text of the draft treaty of 1930, the note on the reservation of British interests in Egypt, the convention of 1899 regarding the Sudan, a note on the Nile Waters Agreement of 1929, are printed or summarized as a valuable appendix.—HAROLD W. STOKE.

The Neutrality Policy of the United States (H. W. Wilson Co., pp. 267), compiled by Julia E. Johnsen, is Number 7 of Volume X of the *Reference Shelf* series. It is built on the order of a debaters' handbook, giving an outline of affirmative arguments on American neutrality policy, followed by an outline of negative arguments. Then a number of general discussion articles are presented from recent magazines; and these are followed by affirmative and negative discussions from similar sources. The articles from which materials are taken seem well selected, and the book should prove useful.—N. D. HOUGHTON.

Pacific Relations; The Races and Nations of the Pacific Area and Their Problems (McGraw-Hill Book Co., pp. ix, 539), by Walter G. Hoffmann, is a text-book on the Far East and Pacific Area designed for senior high-school students. Remoter history is treated very briefly, and practically the whole of the book is devoted to an elementary but well-written and interesting exposition of the cultural, social, economic, and political affairs of the countries around the Pacific rim, with particular stress on international relations. Abundant illustrations lend added vividness, and it is to be hoped that the book will contribute to a better understanding of interests and policies in the Pacific on the part of younger people.

Volume II in the Hoover War Library Bibliographical Series is Nina Almond and Ralph H. Lutz, *An Introduction to a Bibliography of the Paris Peace Conference* (Stanford University Press, pp. 32) and consists of a preliminary list of collections of sources, archive publications, and source books. Nearly all of the works cited are to be found in the Hoover Library, and most of them are now available for the use of scholars.

POLITICAL THEORY AND MISCELLANEOUS

The Puritan Pronaos; Studies in the Intellectual Life of New England in the Seventeenth Century (New York University Press, pp. xi, 281) consists of lectures delivered by the author, Professor Samuel E. Morison, in 1934 before New York University. Reviewers have pointed out that *pronaos* means the portico of a temple. Professor Morison describes the culture of "primitive" New England and shows in what forms some of the intel-

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lectual and spiritual currents of seventeenth-century England entered this region, to be passed on, somewhat changed by the new environment, to later generations. Ordinarily, an account of the cultural life of early New Englanders lays stress on their preoccupation with religion, their intolerance of dissent in theology and morals, and their "individualistic" ideology in other matters. This well documented, balanced, and vivid description substantially qualifies and supplements the conventional account. It is true that the founders of New England were seeking not only a better economic life, but also, and perhaps chiefly, a better opportunity to follow their own particular ways of Christian living; a good part of the intellectual energy of seventeenth-century New England was spent on sermons and theological pamphlets; and a dominant objective in establishing Harvard College was to afford training for the ministry. On the other hand, there are definite indications that there were broader intellectual interests and that the humanist as well as the Puritan traditions of seventeenth-century England entered America through New England. The Harvard charter declared the object of the college to be "the advancement and education of Youth in all manner of good literature Arts and Sciences"; less than half of the seventeenth-century alumni of the college entered the ministry. Important works in English literature (outside the drama) reached New England soon after publication. Theological interests of the clerical leaders led them into scientific speculation. The clergy gladly accepted and propagated the "new astronomy" from Europe. Eleven New Englanders were elected to the Royal Society of London in the seventeenth century. Nor was education left to individual initiative. There were publicly supported schools from the very early years; by the end of the third quarter of the century, compulsory education was nearly universal, and most of the public schools were free for those whose families could not pay. Many towns maintained libraries at public expense. In the matter of toleration also, the contrast between the first and the present-day Puritans is not so great as has sometimes been supposed. Early New England churches, it is true, defined somewhat narrowly the limits of theological speculation, and colonial legislatures provided penalties for the "damnable heresies"; but ecclesiastical and political authorities in twentieth-century New England have also supported restrictions on discussion and teaching. It is true that during the seventeenth-century witchcraft trials the intellectual class generally "kept a cowardly silence"; a few years later, however, most of the leaders in the prosecution "confessed their error, begged forgiveness of their neighbors, and, as far as in them lay, made reparation." Massachusetts leaders most actively concerned in unfair dealings of the twentieth-century prosecution of Sacco and Vanzetti have not yet made any sort of confession or restitution.—Francis W. Coker.

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Modern government has come to be so many things to different people that a restatement of the individualist point of view is timely. Ernest J. P. Benn's *Modern Government "as a Busy-body in Other Men's Matters"* (D. Appleton-Century Company, pp. 245) is a candid and readable attempt at such restatement. The work is divided into four parts: "Government as a Subject"; "Bureaucracy"; "Cause and Effect"; and "Retrospect and Prospect." "Government as a Subject" contains a chapter on "The Lure of Public Life" in which the author finds that the service-motivated candidates for public office today are almoners—with other people's money. In other chapters, he finds opportunity now beckoning youth from the market to the state; and he observes the populace imposing unlimited demands upon government, although no government action, except rarely and negatively, has ever done anything but economic harm. Also he discovers public opinion enslaved by its numerous, powerful, and skilful public servants, while the forces of enterprise functioning freely in a field of order do not achieve the recognition to which they are entitled for their contributions to social well-being. The whole business of government is trouble-shooting, but when government claims too much trouble-solving power, there will always be people to invent or manufacture trouble. This part of the book closes with a discussion of the nature of obedience, which government admittedly implies, but which, under self-government, "involves the added responsibility of understanding the principles upon which the right to obedience is asserted." These turn out to be the basic right to question authority, the necessity of passing on accumulated social experience, and the study of nature's laws. The part dealing with bureaucracy is a protest against current tendencies to expand the civil service (British), against the "new despotism" of administrative activity, and against the "seamy side of government," the latter a refrain stressing the latent immorality of national or collective behavior. The last half of the book is devoted to expositions of cause and effect as observed with respect to governmental action in the domain of money, price, trade, and public finance; and to analyses of government in relation to housing, technological advance, the League of Nations, and organized religion. The discussion chiefly centers about recent British experiences but will be appreciated by many American readers. The book is a shrewd admixture of observation, insight, and political folklore, and the author interweaves his keen critical powers and his will to believe with almost utter abandon. The survival of democracy depends, of course, upon its acceptance of the limitations assigned by the author.—Russell M. Story.

It is well—and inevitable—that each age should endeavor to interpret for its own guidance the thoughts and deeds of men past. This Henry

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Noël Brailsford does in *Voltaire* (Henry Holt and Co., pp. 256), a worthy addition to the excellent Home University Library. In pages vivid, terse, and graceful, he recounts the life of the many-sided, daemonic French moralist. "Cradled in a Jansenist family, born again in the England of the glorious Whig Revolution, himself the forerunner of the French Revolution, he knew by instinct and intercourse the mind of the middle class to which he gave the most brilliant literary expression." But he was more than protagonist for the new bourgeoisie. "He sought above all else to erect for society a new scheme of values among the goods that men desire. He found it in the exaltation of constructive work for the common good. He smashed the barriers of nationality and creed. . . . He saw, across wars and schisms, the great cosmopolitan society. He preached, as the one sufficient commandment, the love of one's fellow-men, and made it concrete and vital, by his relentless assaults upon every form of cruelty." And under all this—and here most clearly we see today's evaluation—Brailsford finds that Voltaire sensed the operation of material factors. "The more one reads of him, the more one is impressed by one assumption that returns again and again. He believes that men act primarily on economic motives, and to economic changes he does in fact ascribe the main trend of political and social evolution . . . Implicit . . . is the essence of the Marxist interpretation of history." Voltaire, we are told, saw more deeply than did his contemporaries. "Though he never tried to relate his optimistic faith in reason to his realistic perception of the all-importance of economic motives and forces," he saw that "one can be moral only in a true society. But is moral conduct attainable, where, as he tells us, there is always a division between the oppressors and the oppressed . . . ? In a society ordered with less respect for class and more for equality, it is conceivable that moral conduct would seem so natural that men might dispense with the rewards and penalties of theism." Perhaps this is more author than subject; but it goes to make of this little volume a thoroughly enjoyable challenge to thought.—ALLAN F. SAUNDERS.

In his *Machiavelli and His Times* (E. P. Dutton and Co., pp. 260), D. Erskine Muir has given us an extremely readable and interesting account of the background—Florentine, Italian, and European—which led Machiavelli to arrive at his political views. A parallel drawn with the conditions of modern times makes this all the more valuable. In addition, the author has recreated for us Machiavelli the man, in all his aspects—as the cold, consistent, and courageous thinker who at bottom was animated by love of his city-state; as the faithful and honorable public official of half a life-time; as the gay and animating pleasure companion who was as unprincipled as his times; as the affectionate father and husband. For

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a picture of "Machiavelli and his times," no better book could therefore be recommended. All the more does one regret that the book stops after that task is accomplished without going beyond it to a searching analysis of Machiavelli's political views. The author does, however, amply demonstrate, by sympathetic interpretation and scholarship, that Machiavelli's principles are not synonymous with the use of brute force for the accomplishment of any personal ambition: "Armies and money are not enough" —in other words, there must be popular consent for the strong state to succeed. But nowhere in the book is the question raised of whether a strong state is really desirable and necessary, and of what the dangers of it are, and whether those dangers are not inherent in the very conception. Without this, it would seem that the parallel with modern times, while interesting, is really valueless. The explanation for this flaw in the author's work perhaps lies in his belief that Machiavelli's methods alone can finally be successful, rather than an appeal to the better impulses of men. Contrasting Savonarola and Machiavelli, the author writes: "Both Machiavelli and Savonarola were to give their lives to the study of the same subject, the happiness and welfare of their fellow-men. Savonarola's solution of the problem failed, and has perished, Machiavelli's has prevailed." But is Machiavelli's solution a "success," and if so, in what terms and at what cost? Students of political theory will not find this point raised.—CARMEN HAIDER.

In his latest historico-sociological study, *Friedrich List, Der Mann und das Werk* (München und Berlin: Verlag von R. Oldenbourg, pp. x, 441), Dr. F. Lenz, author of *Staat und Marxismus, Vulgärökonomie und Karl Marx*, etc., presents an interesting and instructive picture of List's colorful personality and activity, with direct reference to the currents of German political, social, and economic thought during the period from 1789 to 1848, generally called the *Vormärz*. List's political theory centered around the ideas of liberty and property. He favored German political and economic unification in a federated corporative *Rechtsstaat* based on contract and natural rights. To his "interested practical reason" (as Treitschke called it), the form of government was not important so long as it was appropriate to the spirit and conditions of the age and nation concerned. Though he preferred a constitutional monarchy to a democracy, his insistence on representation of the new propertied classes, on civil liberties, and on a responsible cabinet government earned him the epithet "demagogue," a prison sentence, and banishment from his native Württemberg. List was not an original political philosopher nor a systematic economist. He was a realist, his theory being founded on observation and experience. Its aim was to construct, by means of the national productive forces, "national existence, national independence, national pros-

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perity, national power, national culture, and a national future." Dr. Lenz's study of List is unusual; he does not attempt a biography containing a systematic chronology, but treats his subject against the background of the *Vormärz*. This makes the monograph not only interesting for the political theorist and economist, but also highly suggestive because of its numerous scholarly, and rarely partisan, references to the theories and men of the period.—GEORGE MANNER.

H. A. L. Fisher has given the concluding third volume of his *History of Europe* the title "The Liberal Experiment" (Houghton Mifflin Co., pp. xiv, 812–1272, xviii). "Liberal" here denotes "the system of civil, political, and religious freedom now firmly established in Britain and the Dominions, as well as among the French, the Dutch, the Scandinavian, and American peoples." Of this system, the author is an avowed and ardent partisan, a fact which may obscure his even more pronounced love for England and things English. Love makes blind as well as clairvoyant; Mr. Fisher is no exception to the rule in writing this concise and lucid general history of Europe from an English Liberal viewpoint. Little would be gained by swelling the chorus of laudatory reviewers who have showered Mr. Fisher with praise in England. In a brief note, we cannot produce all the shifts in perspective which occur in the reviewer's mind as he tries to gaze at the world during this past century with Mr. Fisher. Just to illustrate the drift, he cannot believe that England brought peace and the blessings of civilization to India (p. 1050). Nor can he follow Mr. Fisher in his account of the origins of the war, in which England appears as the innocent dove of peace, in spite of all that historical documentation has brought to light in recent years (no mention of Sidney B. Fay's magistral treatment of the issues). But perhaps great history writing is necessarily partisan. All great historians certainly were so, from Thucydides down to Mommsen. As such, this type of writing synthesizes the past in the light of the present world as seen by a nation, a party, or some other compact group of human beings. In such terms, Mr. Fisher's book achieves greatness.—CARL JOACHIM FRIEDRICH.

In its specialized form of science, the human mind took a long step forward when it began to ask questions rather than merely to make obligatory answers. Earlier than this, it was greatly obliged to Socrates for his work on the concept. But revolutionary as were these moments, it is only an Occidental who is stupid or biased enough to think that thought began with the Greeks—just as if experience and language were then born. In fact, pre-Grecian thought, though deficient with respect to anticipation and conceptualization, was both extensive and meritorious, as is well evidenced in Joyce O. Hertzler's *The Social Thought of Ancient Civilization* (McGraw-Hill Book Co., pp. xv, 409). Disliking the practice

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of other historians, the author seeks to avoid bias, restrict comment and theorizing to a minimum, and use only first-hand and non-trivial material. For the sake of greater understanding, each thinker or document is given its conditioning factors, economic, political, etc. In the final chapter, the material is summarized under headings corresponding to major problems of today. It is a common and bad mistake to do a great deal of reading in commentaries and but little in source material. When, as is often the case, this is largely because of difficulty in getting at the material, compilers such as Hertzler do a real service. The book is well executed and fulfills a need.—L. M. PAPE.

Agitation over the problem of gold continues to bring forth a stream of books. Charles O. Hardy has attempted to answer the much-debated question, *Is There Enough Gold?* (Brookings Institution, pp. x, 216). Dr. Hardy answers the question affirmatively and insists that inadequacy of gold supply has not *per se* been a factor in the depression. The latter half of the book deals with a critique of the Warren-Pearson price theory. The distinguished Swedish economist, Dr. Gustav Cassel, has been a life-long defender of the gold-standard, but in his recent book, *The Downfall of the Gold Standard* (Oxford Press, pp. viii, 262) he concludes that a return to the international gold standard is not only impracticable but definitely hazardous. His little book provides an excellent brief history of the gold standard since the war. It is his hope that after the present mania for monetary experimentation has spent itself, there can be laid the foundations for a new monetary system which will be more reliable than the gold system of the past. The author does not attempt, within the scope of this book, to set forth in any detail his own ideas as to the general nature of such a system. For those who wish to examine the present status of the gold clause in contractual obligations, Dr. Arpad Plesch has published a valuable collection of the texts of relevant court opinions in eight countries. His volume is entitled *Die Goldklausel* (Vienna: Manzsche Verlags-und Universitäts-Buchhandlung, pp. 162).—GRAYSON L. KIRK.

In *Government Finance in the Modern Economy* (Annals of American Academy of Political and Social Science, Vol. 183, pp. 271), edited by Paul Studenski, we have an ambitious attempt to present a general survey of the fiscal problems confronting a government operating in an unstable industrial economy. The majority of the articles deal with American conditions, but some comparison is made between American and European practices, and the series includes an instructive article by Alexander Gourvitch on "Soviet Government Finance and the Economic Plan." A number of the articles are devoted to the general theory of public revenues and public expenditures, but the series includes at least one article devoted to a consideration of each of the principal taxes levied by

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national, state, and local governments. One group of articles is devoted to a discussion of public credit, and still another is concerned with methods for improving tax administration. In practically all of the articles, some attempt is made to show the effects of the depression on fiscal practices and theories.—PAUL M. ZEIS.

A second revised edition of F. Lee Benns' *Europe Since 1914* (F. S. Crofts and Co., pp. xiv, 851) has given the author an opportunity to bring to date an exceptionally useful historical text, with considerable expansion of the chapters relating to Germany, France, Spain, Poland, and the Baltic states.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CHARLES S. HYNEMAN
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

Books

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